

OFFICE OF THE DISTRICT ATTORNEY ORANGE COUNTY, CALIFORNIA



2002 GRAND JURY RESPONSE

DISTRICT ATTORNEY
TONY RACKAUCKAS

INTRODUCTION

In accordance with the requirements of law, the Office of the District Attorney herewith submits its responses to the findings and recommendations of the Grand Jury. The Office of the District Attorney welcomes this opportunity to discuss its success in protecting and enhancing the public safety and improving the quality of life in Orange County. We have made significant progress in dramatically improving the areas of law enforcement that District Attorney Tony Rackauckas pledged to improve. By re-orienting our priorities and re-directing our resources, gang violence has dramatically dropped, environmental protection efforts have been increased three-fold, and Child Support collections have risen. Much remains to be accomplished and further improvements in several areas can and will be made. The dedicated professionals of this Office will continue to work hard to advance and protect the cause of justice and the public safety.

Executive managers of this Office participated in the preparation of the responses to the Grand Jury Report. They reviewed pertinent case files and records and spoke with members of this Office and other agencies.

At the outset some observations are appropriate. The Grand Jury received a somewhat one-sided view of recent history, apparently a view promulgated by opponents of the changes this Administration brought. It does not appear coincidental that the complaints that prompted the inquiry were made just months

before the March 2002 District Attorney election. The timing is made interesting given that many of the complaints involve events that occurred years ago in 1999 and early 2000.

The Grand Jury also lacked the ability to express a credible opinion as to many of the areas that were covered in the report. In many of these areas, the Grand Jury never called the witnesses or reviewed documents or other evidence necessary to make an informed judgment in a particular area. People with information critical to the areas of inquiry or who held differing views were not called as witnesses, and the information they possessed was therefore not made available to the Grand Jury. Instead, in many cases, a single complainant would report a rumor or unsubstantiated charge to the Grand Jury that, without further evidentiary inquiry, would be reported as a "Finding".

Finally, despite the District Attorney's request, the Office was not granted the opportunity to view the report and comment upon its accuracy before its release, as was commonly done in the past. Had this opportunity been granted, important information could have been added and inaccuracies corrected. This Office has expended considerable effort to bring such additional information forward and to correct numerous inaccuracies in the Grand Jury's report. Our goal in this response has been to address the Grand Jury's findings and recommendations in light of this additional information in a fair and balanced manner.

The Grand Jury's report mentions some of the major accomplishments under the Rackauckas Administration. While we are very proud of those accomplishments, there have been many other achievements by our prosecution team that deserve to be mentioned. Some of the more significant cases are:

- ***People v. Allaway.*** Allaway shot and killed seven people at California State University, Fullerton in 1976. After a lengthy hearing, Allaway lost his bid to be released from a mental hospital.
- ***People v. Ghobrial.*** Ghobrial molested and killed a 10-year-old victim, thereafter entombing his dismembered body in cement blocks. After a lengthy trial, Ghobrial received the Death Penalty.
- ***People v. Garofalo.*** The former Mayor of Huntington Beach was convicted of numerous conflict of interest charges.
- ***People v. Boyce.*** Boyce, in an execution style killing, murdered an off-duty Los Angeles Sheriff's officer during a robbery. Boyce received the Death Penalty.
- ***People v. Brents.*** Brents murdered a young woman by locking her in a car trunk and immolated her by setting fire to the car. After trial, Brents received the Death Penalty.
- ***People v. D'Saachs.*** This case involved the Biofem murder for hire case in Irvine. D'Saachs was convicted and sentenced to 26 years to life in prison.

- ***People v. Vargas.*** Vargas, a gang member, was involved in a murder as well as several robberies. Vargas received the death penalty after trial.
- ***People v. Bechler.*** Bechler murdered his wife, staging it as an accident on a boat at sea. The victim's body was never recovered. After a long trial, Bechler was convicted and sentenced to life without the possibility of parole.
- ***People v. Woods, Amos and Sheridan.*** Horace McKenna, notorious strip club owner, was murdered in 1989. His former CHP Partner Mike Woods paid La Cosa Nostra Associate David Amos to kill McKenna. Amos hired the shooter, John Sheridan. The case went unsolved until the organized crime unit, under the supervision of Chief Blankenship, re-opened the investigation.

In addition to these successes, the District Attorney's Office has had several other notable accomplishments. A few of these are listed below:

1. Members of the Sexual Assault Unit and TracKRS were instrumental in the passage of SB 1242. This groundbreaking legislation allows blood to be taken from prisoners for the DNA database. Substantial efforts by attorneys and investigators, including testimony before the legislature proved critical in the passage of this bill.

2. The Law and Motion Unit has been aggressive and proactive in making significant changes to California law, benefiting prosecutors, law enforcement, and the people of the State. As a result of cases brought and argued before the California Supreme Court by this unit, significant changes advancing the cause of public safety have been won. In *Correa v. Superior Court*, the court found that non-English speaking witnesses and victims need not be forced to testify in court at preliminary hearings when their in-field statements were made to police officers through interpreters. In *Hambarian v. Superior Court*, the court found that using the financial assistance of a public entity victim to prosecute a complex major fraud case did not create a disabling conflict of interest for prosecutors. Similar successes were achieved in the Court of Appeal. In *Walters v. Superior Court*, the court held that it is unlawful for superior court judges to grant secret discovery orders without hearing from the prosecution, firmly establishing Due Process for the People. In *Garden Grove Police Dept. v. Superior Court*, the power of criminal defendants to explore the personnel records of police officer witnesses was curtailed.
3. Through increased efforts on behalf of crime victims, collection of restitution has increased by more than 300%. Orange County is now the *top* county in the state in collection of restitution.

4. The Drug Endangered Children (DEC) Program has become a national model for protecting children found in illegal methamphetamine labs. The PROACT (Meth lab task force) team and DEC team have *nearly eliminated* methamphetamine labs in Orange County.

5. A Government and Community relations section was created in the Office for the purpose of addressing the needs of Orange County's rapidly growing immigrant populations. Due to language and cultural barriers, many of these new residents were reluctant to seek help as either victims or witnesses of crime. The program is currently focused on the Hispanic and Vietnamese communities. The many activities of the program include:
(a) the launching of a media campaign by creating and producing crime prevention messages for Spanish television; (b) the creation of bilingual resource booklets to assist the non-English speaking community to understand and more easily access the criminal justice system; (c) the creation of domestic violence booklets in four languages – English, Vietnamese, Spanish, and Korean in collaboration with the Spousal Abuse Grant and the Family Protection Unit; (d) providing criminal justice workshops for 300 students in three community colleges; (e) implementing a summer education program for high school students; and (f) organizing community events, town hall meetings, and workshops throughout the County on crime issues.

6. District Attorney staff in the six Branch Courts (Central-Santa Ana, West-Westminster, North-Fullerton, Harbor-Newport Beach, Harbor-Laguna Niguel, Juvenile-Orange) have developed an unprecedented level of cooperation with the local police departments in training and handling of cases. At these Branch Courts, several deputy district attorneys volunteer their lunch hour on a regular basis and conduct the Orange Outreach program. This program is an outreach to elementary school children focusing on self-esteem, self-confidence, and the criminal justice system.
7. In recognition of its outstanding work, the Juvenile Unit has received grants to assist with the prosecution of sex offenders, serious offenders and major crimes on school grounds. The first grant was awarded two years ago to initiate an innovative program to deal with the increase of juvenile sex offenders. In the first of its kind statewide, this program devotes resources to prosecuting and treating sex offenders. An important part of the program is its emphasis on providing help for the child victims. Alongside the juvenile sex offender program are three prosecutors specifically assigned to handle serious felony offenses committed by juveniles. Over the years, juvenile offenders have become brazen in their level of criminality and are becoming a major threat to the safety and welfare of our community. These prosecutors are meeting this challenge by focusing on the worst of the juvenile offenders and seeking the appropriate sentence to insure the safety of our citizens. Lastly, our

Office is in partnership with the Sheriff's Department in the School Mobile Resource Team (SMRT). A prosecutor is teamed with investigators and responds to threats of violence and major crimes on school grounds. This group is taking a proactive approach to promote a safe school environment for our children.

8. This Office has made a concerted effort to reduce gang-related crime. Resources and priorities have been adjusted to reflect this commitment. Two new Target teams have been created. The Regional Gang Enforcement Team (RGET) was created to deal with the multi-jurisdictional problem of roving gangs. RGET has been extremely successful in combating Asian gangs. Also, the Tustin Target team was created to deal with gang problems in that city. The efforts to combat gangs as a high priority have yielded positive results in lowering homicide rates and violent offenses.

9. The Consumer Fraud Unit, responsible for protecting the public against unfair and deceptive business practices, collected nearly one million dollars in fines during the fiscal year ending June 2002.

Such successes as these could not be accomplished by an office as destitute of morale as the Grand Jury Report suggests. It is our belief that office morale is very good. The only claims to the contrary came from a small but vocal minority

with their own political and personal agenda. As to the source of this vocal minority, a few additional observations should, however, be made.

The last time an Orange County District Attorney from outside the Office was elected occurred over 40 years ago. Tony Rackauckas' initial election in 1998 was a unique watershed event in the history of the Office. For decades each new District Attorney was selected from within the Office by his predecessor. For example, the previous District Attorney, Mike Capizzi, was selected by his predecessor Cecil Hicks and thereafter appointed to that position in 1988. Cecil Hicks was selected by his predecessor, Kenneth Williams. Tony Rackauckas' opponent in the last two elections was supported by Mr. Capizzi to be his successor.

Many commentators on bureaucracies have noted that when elective office is held for a long period by selected insiders, there is a tendency for an entrenched bureaucracy to develop. With an entrenched bureaucracy there in turn may develop a feeling of entitlement among some of the "selected" insiders. When these feelings of entitlement are disappointed or frustrated, disgruntlement can result. When, as the result of an election, a new leader is selected, and a new course charted, anger and outright opposition from within this entrenched group may ensue.

As noted, the District Attorney election in 1998 marked a break in a decades long chain of insider selected succession. A new course of emphasis on violent crime, gang suppression, environmental protection and increased family support was put in place. The Office was reorganized, for the first time in decades, according to a plan jointly formulated by Tony Rackauckas and the County Executive Office (CEO). This plan was then reviewed and approved by the Board of Supervisors. Managers able and willing to join this new course were selected and put in place. A majority of these managers were the same managers that had served the previous Administration. There was no failure to recognize that there were many career prosecutors who were willing and able to work with the new Administration in pursuing the new course which had been plotted and for which the electorate voted. Many of the reforms, which the Grand Jury Report termed "major accomplishments," were instituted and advanced by these career prosecutors who were promoted in this Administration. It remains an unfortunate fact, however, that a few refused to support the new course that this Administration chose to steer.

Mr. Rackauckas first ran for the Office of District Attorney on a platform of change. He proposed, and promised to implement, new policies that substantially differed from those of his predecessors. These areas included re-emphasizing the vigorous prosecution of violent criminals, the suppression of gangs, the enhancement of enforcement of environmental laws and increased performance of family support. In addition, as a judge, he had witnessed first-

hand the destructive effects and often unjust results of the stifling policies and bureaucratic inertia imposed on prosecutors by the previous administrators. He vowed to change these policies freeing prosecutors from stifling rules and streamlining the bureaucracy. Of necessity, these promised changes involved not just changes in policies, but structural and personnel changes as well, including changes in many aspects of the manner in which the District Attorney's Office was administered and supervised. The electorate, to whom Mr. Rackauckas is responsible, expected a new course. It was his responsibility to ensure that this new course was charted and pursued. He needed a management team that was willing and able to break with the past.

The changes, however, had the unfortunate effect of causing frustration and disgruntlement among some. They shared some common attitudes: a desire for a continuation of the status quo; feelings of infringement upon long held privileges or prerogatives; denial of promotions that were expected or felt deserved; and finally, the loss of long held positions of power to which they felt entitled. A frank reading of much of the Grand Jury's Report yields the conclusion that many, if not all, of the complaints made to that body originated from this group. It is interesting to note that some of the voices raised against this Administration were individuals that as late as mid-2001 were applying to be promoted into the very management team they have so roundly criticized. It was completely unreasonable for the Grand Jury to find that these few disgruntled former managers from the prior Administration were "willing and able to work

competently within a new Administration” and that it “set the wrong tone” not to retain these very disgruntled managers to implement the very reforms that they had so passionately campaigned against.

An example of one of the reforms that was opposed by some of these voices was the Felony Charging Unit, the creation of which was highlighted by the Grand Jury’s Report as one of the major accomplishments of the Rackauckas Administration. This unit transferred authority for the handling of felony cases from many managers who had retained such responsibility in prior Administrations. Although a necessary and appropriate reform, this loss of previously held prerogatives led some to oppose it. When this opposition failed, at least one manager, held over from the previous Administration, lodged numerous false accusations against other prosecutors in the unit. This was supplemented by further attempts to undermine this reform by actively defaming it to police departments that the unit was in part designed to serve. Much energy was diverted to constantly investigating these false accusations. Sadly the fact that these false accusations threatened the careers of hard working career prosecutors did not seem to deter their use.

This Administration has undertaken the most far-reaching reforms in the Office of the District Attorney in decades. This Administration has carried out the will of the citizens of Orange County by bringing necessary reform to the Office of the District Attorney. Many of these reforms were commended by the Grand Jury. It

is the intention of the Office of the District Attorney to continue along this path of reform.

RESPONSE TO FINDINGS

FINDING NO. 1:

The DDA V position, in effect, was not eliminated. It was renamed ADA, while the job remained functionally the same as that of the DDA V position. This left an impression throughout the organization that the intention was to selectively eliminate former District Attorney Mike Capizzi administration managers rather than a job category.

RESPONSE TO FINDING NO. 1:

The DDA V position was in fact eliminated. The ADA position was created during the reorganization of the Office of the District Attorney. The initial plan for this reorganization was approved by the County Executive Office (CEO). Reforms undertaken by the District Attorney pursuant to this plan therefore were done within the prevailing county rules and with the consent of the County Executive Office. In addition, at the end of the first year of the Rackauckas Administration, a staffing assessment study of the Office of the District Attorney was implemented with the County Executive Office. The study culminated in a report dated December 15, 1999 and entitled "DA Criminal Staffing Assessment Final Report" (hereinafter referred to as the "Report"). The Report made further reorganization proposals, which again were formulated jointly with the County Executive Office and approved by the Board of Supervisors. The proposals were not actions taken unilaterally by the District Attorney. Curiously, although some of their

records were subpoenaed, *no one* from the County Executive Office was ever called to testify before the Grand Jury in order to clarify this area. Had the Grand Jury heard from other agencies directly involved they would have received a more complete picture of the reforms and reorganizations instituted.

The initial reorganization proposal replaced the 22 Deputy District Attorney V positions with the position of Assistant District Attorney, and was compensated according to an existing County executive manager schedule (designated ML-E). There are such executive managers in every department in the County and the benefits are the same throughout these departments. They are not unique to the Office of the District Attorney. The reduction in the number of managers was accompanied by a corresponding merger of units and increase in managerial responsibilities of the Assistant District Attorneys. The reorganization therefore involved different and often increased responsibilities of the position of Assistant District Attorney. Some examples are illustrative:

The Narcotics Enforcement Team, formerly a separate unit, was merged into a larger unit which included the career criminal and other units. The Target and Gang Unit was combined into a single unit. A single Assistant District Attorney was assigned to manage the Homicide unit where two Deputy District Attorney V's had formerly done so. In each of these instances the Assistant District Attorneys assumed duties and responsibilities greater than those formerly held by Deputy District Attorney V's.

Along with this greater control and responsibility came greater discretion. As an example under the former administration a Deputy District Attorney could not move to dismiss a strike unless approval was sought and granted by a Senior Assistant District Attorney. Deputy District Attorney V's had no authority to grant such discretion. The Assistant District Attorney does.

Since the issuance of the Report, this reorganization has continued. An example is the Felony Charging Unit, the creation of which was recommended by the Report. The Assistant District Attorney in charge of this unit had supervised more than 30 Deputy District Attorneys, a far greater number than that formerly supervised by any of the Deputy District Attorneys V's. Moreover, this Assistant District Attorney assumed responsibility for the creation of countywide filing policies for felonies to ensure consistent treatment among the various branch courts. The responsibilities of this Assistant District Attorney were soon expanded to include felony preliminary hearing units in each of the branch courts, extending supervisory duties to include the prosecution of felonies from initial filing through preliminary hearing. The creation of pre-trial settlement policies for felonies became an additional requirement, as did the training of Deputy District Attorneys in these policies. The Report stated the duties of this Assistant District Attorney thusly, "This position will perform the following core functions (1) establishing unit standards, (2) training of unit attorneys, (3) coordination with courthouse team leaders to ensure an even workload, (4) oversight and evaluation of attorneys, (5) senior liaison with law enforcement and court staff concerning filing and preliminary hearing issues." (The Report, at p. 15)

Eventually the duties became so great as to require the splitting of the unit into two teams and the appointment of an additional Assistant District Attorney.

One of the purposes in this reorganization was to free the branch court Assistant District Attorneys from the responsibility of handling felonies. This enabled the branch court Assistant District Attorneys to devote additional time and energy to the training of entry level Deputy District Attorneys. This reduction in the breadth of duties of the branch Assistant District Attorneys was therefore accompanied by an *increase* in the depth of those duties. The Report states it thusly as: “Reducing the Head of Court’s span of control to allow that position to focus on its core responsibility of providing training, development and oversight of junior level attorneys within misdemeanor Operations.” (The Report, at p. 15) The job of the newly created Assistant District Attorney position is therefore not functionally the same as the former Deputy District Attorney V.

The District Attorney disagrees that this left an impression “throughout the organization” that the creation of the Assistant District Attorney position was to intentionally eliminate managers from the former administration. Most of the Deputy District Attorney V managers of the former administration were initially appointed either an Assistant District Attorney or Senior Assistant District Attorney. In fact, of the 22 Deputy District Attorney V’s in the office at the time of the reorganization, *all* but nine were appointed as either Assistant District Attorney or Senior Assistant District Attorney. Three of the four Senior Assistant District Attorneys originally appointed by Mr. Rackauckas were managers in the previous Administration. In addition, the Chief Assistant, the position second

only to the District Attorney, was a former manager in the previous Administration.

Finally, two of the four Senior Attorney Managers in the present Administration were also managers in the previous Administration. Their years of experience range from 17 years on the job to over 30. Collectively, this executive management team has nearly 100 years of experience in the Orange County Office of the District Attorney, 30 years of which is managerial. Among them they have completed nearly 300 felony jury trials, including over 100 homicide trials. Their collective professional experience, *by far*, exceeds that of the executive management team of the previous Administration. They are fully qualified to discharge the duties of their positions.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 2:

The “at will” status that was associated with the newly created ADA position has had no positive impact on the organization. Conversely, it introduced a pervasive hesitance to engage in open and honest communication.

RESPONSE TO FINDING NO. 2:

Prior to November 1999, the “at will “ status of the Assistant District Attorney position as originally established provided for a right of reduction in grade to Senior Deputy District Attorney. This was the then prevailing rule in the County’s

Personnel and Salary Resolution for this classification. The County's philosophy of executive management favors having these positions at will. This mirrors private industry and is believed to foster increased productivity. The subsequent change in this rule to eliminate the right of reduction in grade was not established by the District Attorney. It was initiated by the County Executive Office and approved by the Board of Supervisors in November 1999. This was a countywide change in the "Personnel and Salary Resolution," applicable to all Executive Managers in all county departments, not exclusively to the Office of the District Attorney. The District Attorney fully supports "at will" status for executive management. The Executive Management classification has the positive impact of allowing the District Attorney to select and remove managers to best effectuate departmental policies and meet desired goals. Given that a substantial reorganization of the office was in progress, it was important to have managers willing to carry out the necessary reforms and the associated policy changes. There has been no "pervasive hesitance to engage in open and honest communication" among the Assistant District Attorneys. Management meetings are frequent, and opinions are shared in a vigorous and spirited fashion.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 3:

Good policy ordinarily indicates that extensive interviews are necessary for hiring into positions such as ADA. Although cursory applications were processed, no

interviews were conducted. The process, which gave the appearance of “appointing” persons to these positions, resulted in a widespread perception of a lack of fairness and intentional retribution on the part of the District Attorney.

RESPONSE TO FINDING NO. 3:

Interviews are not always necessary, and they were not necessary during the initial promotion process to Assistant District Attorney. The applications for Assistant District Attorney were not “ cursory.” They involved extensive written responses and required thoughtful composition concerning problems in the office. Given that all of the applicants were long-time employees of the office, whose accomplishments were well known, extensive interviews for the initial promotions were not required. This same practice was often employed by previous administrations on numerous occasions. This was especially so when it involved promotion of long time employees to newly created positions. A good example of this was the previous administration’s promotion process involving the then newly created position of Senior Deputy District Attorney in 1990. Interviews were not employed in the 1990 process either.

This process did not give the appearance of retribution against managers of the previous administration. As noted above, most of the former managers were promoted to the positions of Assistant District Attorney or Senior Assistant District Attorney.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 4:

The existing job description for the ADA position is inadequate; it does not specifically apply to the District Attorney's Office.

RESPONSE TO FINDING NO. 4:

The Assistant District Attorney designation is a working title that falls within the County of Orange's Executive Manager Classification (Title Code # 8010E3) in the County's Administrative Manager Series. The County has a published job description that applies to this series and sets forth their duties as managers. It does not specifically refer to the tasks of an Assistant District Attorney. The County, as well as other successful organizations, utilize broad classifications focused on achieving business goals rather than specific descriptions tailored for individual employees. The District Attorney plans to work with the County Executive Office's Department of Human Resources to further study whether or not this classification requires further refinement.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 5:

The significantly increased salary and benefits package for the ADA position, as compared to the eliminated DDA V position, makes ADAs more "economically beholden" to upper management than their former DDA V counterparts.

RESPONSE TO FINDING NO. 5:

Increasing salary for the Assistant District Attorney position to the higher end of the Deputy District Attorney V salary range, commensurate with the increased and changed responsibilities of that position was fair and appropriate. If the Grand Jury's Finding is accepted, then whenever there is an increase in the pay range for anyone, for any reason, that person becomes more "economically beholden." This reasoning leads to illogical results: In order to avoid increasing "economic dependency," pay or benefits raises should be forever denied. On the other hand, decreasing pay and benefits reduces "economic dependency." Increased benefits accorded the Assistant District Attorneys are just and proper compensation for their increased responsibilities.

The salary levels that were set and subsequently adjusted were done so in consultation with the County Executive Office's Department of Human Resources in order to maintain an appropriate salary differential between that of Assistant District Attorney and Senior Deputy District Attorney.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 6:

The elimination of fallback rights from the At Will Agreements has had a negative effect on department effectiveness and efficiency. It discourages qualified candidates from seeking management positions and has led to the need for

adjunct verbal and notational agreements of questionable legality and enforceability that promise “no risk of termination” to handpicked candidates. Furthermore, this “at will to the street” status inhibits open and honest communication, resulting in an environment of mistrust and insecurity, and impedes meaningful on-the-job training.

RESPONSE TO FINDING NO. 6:

The elimination of fallback rights from the At Will Agreements has not had a negative impact on department effectiveness and efficiency.

The Board of Supervisors enacted the provision eliminating fallback rights from “at will” agreements with executive managers throughout the County in November 1999. Although the District Attorney agrees with this provision, he felt it necessary to modify it because of the special sensitivities of his Office at the time. He did so by personally representing to his newly appointed Assistant District Attorneys and Senior Assistant District Attorneys that they would be put back into Senior Deputy District Attorney positions if serving as an Executive Manager did not work out for them. As the department head, the District Attorney has the authority to move staff into and out of Executive Management positions.

The Grand Jury’s Report does not specify how meaningful on-the job training is impeded by this practice. Training programs for management have been instituted by Mr. Rackauckas. These training programs included a series of sessions for all managers and supervisors on goal development, team building,

communication, and management skills. The Office's mission statement was derived from one of these sessions attended by all managers and supervisors. These have not been impacted by the "at will" policy or adjunct agreement.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 7:

Prosecutors are rightfully bound by very stringent ethical laws and guidelines. They occupy positions that mandate a high level of fiduciary responsibility. Open and honest communication up the chain of command, as to handling cases and the appropriateness of District Attorney policies and practices, is a necessary part of a prosecutor's job. A District Attorney's office, because of its ethical responsibilities, is not analogous to a private corporation.

RESPONSE TO FINDING NO. 7:

As set forth below, the Office has policies and procedures in place, which relate to this finding.

Prosecutors are bound by strict ethical laws and guidelines. Open and honest communication up the chain of command is necessary and important. The District Attorney's Communications Plan is discussed in the attached memorandum dated January 4, 1999. To further the Plan's goals, the following meetings are scheduled:

- Daily meetings between Senior Assistant District Attorneys and the Bureau Chief
- Weekly meetings of District Attorney and Executive Staff (Chief Assistant, Senior Assistants, Bureau Chief, Administrative Director)
- Biweekly meetings of Senior Assistants and their section's Assistant District Attorneys
- Weekly to Biweekly meetings of Assistant District Attorneys and unit/branch deputies working for those Assistant District Attorneys
- Monthly meetings of the District Attorney and Assistant District Attorneys

In addition, there are daily informal meetings between and among all levels of attorneys as needed.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 8:

At the time Mr. Rackauckas assumed the position of district attorney, he treated three of the former District Attorney Mike Capizzi ADAs (upper management in the DA's office) in an intimidating and unjustifiable manner, to the detriment of the office.

RESPONSE TO FINDING NO. 8:

Mr. Rackauckas first ran for the Office of District Attorney on a platform of change. He proposed, and promised to implement, new policies that substantially differed from those of his predecessors. These areas included re-emphasizing the vigorous prosecution of violent criminals, the suppression of gangs, the enhancement of enforcement of environmental laws and increased performance of family support. In addition, as a judge, he had witnessed firsthand the destructive effects and often unjust results of the stifling policies and bureaucratic inertia imposed on prosecutors by the previous administrators. He vowed to change these policies freeing prosecutors from stifling rules and streamlining the bureaucracy. Of necessity, these promised changes involved not just changes in policies, but structural and personnel changes as well, including changes in many aspects of the manner in which the District Attorney's Office was administered and supervised. The electorate, to whom Mr. Rackauckas is responsible, expected a new course. It was his responsibility to ensure that this new course was charted and pursued. He needed a management team that was willing and able to break with the past.

Mr. Capizzi's upper management teams all held "at will" positions. That is to say, that they had written agreements with Mr. Capizzi that they would hold those management positions at the will of the District Attorney. If the District Attorney wished to exercise the "at will" provision of their contract they could be reduced to a non-management position. The purpose of this pre-existing arrangement is clearly to enable a District Attorney to select the management team he believes

is best suited to effectuate his policies. It therefore should have been understood that a newly elected District Attorney would, in all likelihood, seek to select his own management team.

Mr. Rackauckas felt it necessary to change the management team of the District Attorney's Office in order to effectively institute the reforms that he had promised during the election campaign. It is basic to our democratic system that an elected official be allowed to select managers he trusts to carry out the promises he made to the electorate.

Mr. Rackauckas consulted with the County Executive Office's Department of Human Resources to gain additional options for them. He explained that he had been authorized by the County to give them two years service credit towards their retirement, which would improve their retirement benefits.

These discussions were conducted in a quiet office atmosphere in the presence of an attorney. They were not conducted in the District Attorney's Office because Mr. Capizzi would not allow the District Attorney-Elect to use the District Attorney's Office during the transition. At these meetings the experienced management attorneys, all of whom knew Mr. Rackauckas for many years, were not intimidated.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 9:

The persons hired by Mr. Rackauckas for the Chief Investigator position and the two Acting Deputy Chief positions did not have the supervisory experience commensurate with their positions.

RESPONSE TO FINDING NO. 9:

This Finding is inaccurate.

A. Chief Blankenship:

Mr. Blankenship not only met, but exceeded the qualifications set by the Board of Supervisors for his position. Having worked for the Santa Ana Police Department for over twenty-four years, Mr. Blankenship's resume includes numerous experiences requiring a supervisory role. His experience included working in Patrol, Community Relations, Gang Detail, Intelligence and Organized Crime. He occupied the position of Sergeant/Watch Commander, where he supervised up to 50 patrol officers at a time.

Mr. Blankenship was also President of the Santa Ana Police Officers Association which had 542 law enforcement officers (sworn and non-sworn) under his leadership. He was so successful he was re-elected for seven successive terms, before accepting his present position. Mr. Blankenship was also President of the Southern California Alliance of Law Enforcement, which represents over 45,000 California law

enforcement officers. Mr. Blankenship was voted by Santa Ana Police Officers as Supervisor of the year in 1986.

The experience Mr. Blankenship possessed made him uniquely qualified for the position of Chief. This position entails not only supervisory duties but also was intended, and proved to be, instrumental in organizing efforts to enact important legislation to benefit Orange County residents and crime victims. Examples of the success of Mr. Blankenship's efforts in this regard include: the passing of a law extending the statute of limitations on certain sex crime cases, and, a pending bill, allowing blood to be forcibly drawn from offenders convicted of certain specified crimes -- both matters of importance to public safety. The Background Check Summary of the County Human Resources Department, an agency independent of the Office of the District Attorney, dated February 10, 1999, commented on Mr. Blankenship' qualifications in its summary. In a passage, apparently unknown to the Grand Jury, the summary stated:

He has *excellent* experience, both in the law enforcement field, and as the leader of a large labor organization.... A review of his personnel records confirmed his varied experience, and revealed an articulate, well thought of police officer and supervisor, who possesses extremely effective people skills. No negative information or comments were found. ... The *applicant is highly regarded, both as a law enforcement supervisor, and as an extremely talented administrator of a large labor organization.*

Through his efforts and good working relationships with the City, and local, and state police labor organizations, the applicant has furthered the goals and objectives of his organization, the members, the Santa Ana Police Department, and law enforcement in general. He has also developed an excellent reputation with local, state, and federal political figures and has been instrumental in furthering legislative needs to enhance both City and law enforcement issues.

Added to the results of this *independent* background check is the fact that Police Chief Paul Walters, Mr. Blankenship's former supervisor, highly recommended him for the job of Bureau Chief, again, another fact apparently not known to the Grand Jury. These facts make it apparent that Mr. Blankenship was a clearly superior candidate for Bureau Chief and is eminently qualified to occupy that position.

B. Assistant Chief Carre:

As with Mr. Blankenship, Michael Carre also exceeded the County's qualifications which were approved by the Board of Supervisors for the position of Assistant Chief. In conformity with the principle that experienced trial investigators should be promoted, Michael Carre, was appointed to the position of Acting Deputy Chief. The primary responsibilities of an Acting Deputy Chief include the administrative and line functions of the Bureau of Investigations.

In Mr. Carre's case, he is responsible for these functions in Warrants/Net, Training, Background, Homicide, Special Assignments, Family Support Investigations, and Welfare Fraud. Mr. Carre's twenty-two years in the Office of the District Attorney included experience in almost all of these units. In addition he had supervisory experience gained while a Sergeant with the La Habra Police Department. Prior to that he was promoted from Detective to a Master Police Officer, which also exercises supervisory responsibilities. These included duty as a first line supervisor and field training officer, as well as, the training of new patrol officers and the conducting of performance evaluations. Mr. Carre was also appointed by Governor Wilson three years in a row to the Peace Officer Standards and Training (POST) Commission. During that time Mr. Carre served on the Legislative Review and Advisory Sub-Committees. He also served as the chairman of the Finance Sub-Committee, which is responsible for the review and recommendations of programs for the twelve million-dollar POST budget.

In response to a question as to who they felt would be the most qualified to fill the Assistant Chief position, an overwhelming majority of supervising investigators expressed preference for Mr. Carre. In addition, a review of Mr. Carre's performance evaluations over a twenty-two year period in the office consistently revealed "Outstanding" and "Superior" ratings. In Mr. Carre's last evaluation, prior to his appointment, his supervisor wrote: "He is an outstanding law enforcement officer and a role model for others.

His experience, positive attitude, motivation, and job skills have earned the respect of his peers, the legal staff and supervisors.” Mr. Carre’s appointment was long overdue.

C. Assistant Chief Michael Clesceri:

The Grand Jury report states that the minimum job experience qualifications were “changed to accommodate his selection.” The minimum qualifications for Assistant Chief were indeed changed after 1999. This change allowed the flexibility to recruit from outside the Agency. The original requirement required that the candidate possess one year in a responsible supervisory capacity specifically in the Office of the District Attorney. This was changed simply to requiring either that or one year in a supervisory capacity in the Office of the District Attorney or in another law enforcement agency. This minor change was submitted to, and approved by, the Board of Supervisors. Mr. Clesceri met these qualifications.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 10:

There were no job recruitments, open application process, or formal interviews for the position of Bureau Chief and the newly created acting deputy chief positions.

RESPONSE TO FINDING NO. 10:

The process for filling these positions was in compliance with County policy and performed with the assistance of the County Executive Office's Department of Human Resources. Processes used to fill the positions included appointment, promotion, and recruitment.

It is appropriate for an elected official upon taking office to select people he or she knows, trusts, and respects for top management positions. This is done at all levels of government, from the Office of the President of the United States down.

Before taking office, the District Attorney spent a considerable amount of time, effort and thought before making decisions as to whom to place in top management investigative positions. He interviewed a great many of the investigators and all of the supervisors and commanders in the District Attorney's Bureau of Investigation. He also discussed the relevant issues with many police officials throughout the County.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 11:

The three top positions in the Bureau of Investigations went to persons active in police associations and/or were Rackauckas campaign supporters.

RESPONSE TO FINDING NO. 11:

These positions were not awarded to any person based on his status as a campaign supporter or as a person active in police associations.

A. Don Blankenship:

Chief Blankenship was selected because he had the experience, intelligence and integrity required to be the Chief Investigator. (See Response to Finding No. 9.)

B. Michael Carre and Michael Clesceri:

Before the District Attorney took office he interviewed *all* commanders, *all* supervising investigators and the Assistant Chief as potential candidates. Both Michael Carre and Michael Clesceri were appointed because they were qualified for their positions and were trusted to carry out the changes in organization and policies directed by the District Attorney as more fully described elsewhere in these replies.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 12:

Mr. Rackauckas encouraged the prior administration's command staff, commanders and above, to accept an early retirement incentive package. The

former command staff did not feel welcome in the new Rackauckas administration.

RESPONSE TO FINDING NO. 12:

The acceptance of an early retirement incentive package was and is completely voluntary. All of the prior Administration's staff were treated as valued members of the organization.

For the reasons indicated above, the Office of the District Attorney disagrees partially with the finding.

FINDING NO. 13:

There have been numerous incidents of district attorney employees violating the policy prohibiting the use of county time, equipment, and other resources for non-county purposes.

RESPONSE TO FINDING NO. 13:

As set forth below, there have been instances where the policy has been violated; however, those instances noted by the Grand Jury were minor and very few in number considering the Office has over 1,300 employees.

The policy of the Office of the District Attorney prohibits the use of county time, equipment, and other resources for non-county purposes. This policy is stated in the Office's policy manual for Attorneys, Investigators and all other Office staff. Moreover, this policy is reviewed with newly hired staff during orientation and

throughout the year in training sessions for staff. The Office enforces these policies prohibiting the use of county time, equipment, and other resources for non-county purposes.

The Grand Jury's report states that there were numerous instances of such non-County use is false.

When violations of this policy are reported, they are investigated and appropriate disciplinary action is taken.

For the reasons indicated above, the Office of the District Attorney disagrees partially with the finding.

FINDING NO. 14:

Notwithstanding the computer screen admonition concerning the use of the computer for county-related purposes only, there is no comprehensive policy concerning the inappropriate uses of department equipment, e.g., fax machines, desk phones, cell phones, copying equipment, and computers (e-mail and Internet); county time; or other county resources, including staff.

RESPONSE TO FINDING NO. 14:

The Orange County Office of the District Attorney has a comprehensive policy concerning the inappropriate uses of department equipment and staff. In May 1994, the Office created a basic office guidelines manual clearly addressing these issues. As technology and equipment developed and expanded, greater

accountability became evident. Beyond the computer screen admonition, the Office required its employees to sign an Internet use policy agreement and a broader computer usage policy. These agreements were put in place in 2001-2002. The restrictions placed on our employees became the model for the County.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 15:

There is no policy concerning the appropriate level of discipline for varying degrees of prohibited use of county time, equipment, or other resources.

RESPONSE TO FINDING NO. 15:

A policy statement outlining specific discipline for varying degrees of prohibited use of county time, equipment, or other resources would not comply with the policy of the County of Orange. In determining the appropriate level of discipline, the Office of the District Attorney follows the County of Orange's policy of progressive discipline. Progressive discipline requires disciplinary issues be handled on a case-by-case basis. The application of progressive discipline requires the Office/County take a number of factors into consideration in making a decision on the appropriate level of discipline. The progressive discipline model is commonly used in the public and private sectors and is imbedded in the various Memorandum of Understanding with the County's labor organizations.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 16:

There is neither a training program, nor training manual for district attorney employees concerning the inappropriate use of department time, equipment, or resources.

RESPONSE TO FINDING NO. 16:

The Orange County Office of the District Attorney has a training program, training manual and a memorandum concerning the inappropriate use of department time, equipment, and resources. Deputy District Attorneys and investigators receive a two-week training program upon their initial hire. During this time, they receive office guidelines and policies on the appropriate use of department time, equipment and resources. All staff are issued a five-page memorandum covering the same subject. Both the Deputy District Attorneys and investigators have been working to update their respective training manuals. The Grand Jury was given a first draft of the Deputy District Attorney manual which contained several pages of guidelines and policies (restated or expanded from previous memos). Unfortunately, the Grand Jury did not have access to relevant information because they did not interview the primary persons responsible for Deputy District Attorney and investigator training.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 17:

District Attorney's Office investigative resources were not appropriately utilized in the monitoring/surveillance of Mr. Rackauckas' son; conducting the inquiry into the legality of the towing of Chief Blankenship's family car; and conducting the inquiry concerning Mr. Rutledge's involvement with a car business.

RESPONSE TO FINDING NO. 17:

A. Mr. Rackauckas' Son:

Anthony Rackauckas Jr. had his California Driver's License suspended for driving under the influence. Minimal resources were used in an effort to prevent a recurrence which would could pose a danger to public safety. This consisted of an investigator already en route to Palm Springs stopping briefly for an address check. After that was done, an additional trip to the Riverside County Sheriff Department was made to notify them of the suspended license at the address and again stress that Mr. Rackauckas wanted no special treatment for his son.

B. Chief Blankenship's Family Car:

Previous to this incident, Mr. Blankenship had experienced a similar situation in his official capacity with the Santa Ana Police Department involving a tow

company and a civilian complaint. In that case the city concluded the tow company was engaging in unfair business practices. With that in mind, Mr. Blankenship requested an investigator to merely inquire with the county as to whether the tow company's conduct in this situation was legal. When he was informed that it was, no further action was taken. The Office of the District Attorney frequently investigates fraud and unfair business practices based on consumer complaints and even personal experiences. Consumer fraud cases have, in the past, frequently been initiated by the experience of an investigator, Deputy District Attorney, and/or clerk in the Office of the District Attorney.

C. Devallis Rutledge:

After Devallis Rutledge's resignation from the Office, a complaint was received by a business owner regarding a Deputy District Attorney creating a problem at a local business. It was learned from the police agency that officers had responded to an automotive business regarding a verbal dispute between the business owner and Devallis Rutledge concerning the possession of a car. The owner believed that Mr. Rutledge wanted to take custody of the vehicle and improperly claimed that he worked for the District Attorney. The business owner indicated that there was a videotape of the dispute. After discussions with the responding officer and the failure of the business owner to provide a videotape of the incident, no further action was taken. Improperly representing oneself as a sworn member of law enforcement is a matter that routinely warrants inquiry.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 18:

The District Attorney's Office missing person investigation concerning an adult male, who was the former boyfriend of Chief Blankenship's daughter, was in the public interest. However, assistance in such investigation was contrary to the practice of the District Attorney's Office in regard to adult missing persons.

RESPONSE TO FINDING NO. 18:

The Office disagrees that assistance in the investigation was contrary to the practice of the District Attorney's Office in regard to adult missing persons.

At the time of the Office of the District Attorney's involvement there was no existing relationship between any member or relative of a member of the Office. The father of the missing person contacted the Chief and reported that he believed his son had been kidnapped. Believing this to be an emergency situation, the Chief immediately contacted the Sheriff's Department. The Sheriff's Department *requested* that the Office of the District Attorney continue with the initial portion of the investigation. The subsequent investigative efforts that were undertaken were done so at the request of the Sheriff's Department. After this initial investigation was done, the case was referred back to the Sheriff's Department. This action taken, at the request of the Sheriff, is not contrary to Office policy. The District Attorney's Bureau of Investigation will often assist

other law enforcement agencies including the Sheriff when requested, especially on matters of imminent danger to persons.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 19:

The District Attorney's Office use of investigators time in the above referred to inquiries or investigations would not have occurred except for the close present or former relationship of persons involved in the underlying circumstances with upper management personnel of the District Attorney's Office.

RESPONSE TO FINDING NO. 19:

When the Office of the District Attorney received information regarding the aforementioned underlying circumstances, as with any law enforcement agency, it was obligated to respond in a manner consistent with public safety and enforcement of applicable laws. This is what occurred.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 20:

The investigators' time expended on the inquiries/investigations was not documented because it is the practice of the District Attorney's Office that

investigator do not fill out time sheets or other logs to document time spent on cases, investigations, or inquiries.

RESPONSE TO FINDING NO. 20:

As set forth below, the Office does maintain records of investigators' time.

It is currently the practice of the Office of the District Attorney that investigators do not document their exact time spent on inquiries/investigations. The former policy that required such documentation was abandoned as impractical by the previous Administration. It was replaced at that time by a system that provides for the recording of monthly statistics. With this type of accounting mechanism each investigator is required to log how much of his/her time each month is spent serving subpoenas, locating and interviewing witnesses, writing reports, preparing search warrants, and so on. Additionally, each investigator is required to keep track of the number of cases in his/her caseload. Investigators spend a majority of their time on multiple tasks, often out of the office. Given the nature of their work, experience has proven that this type of accounting system is much more practical and efficient than that formerly employed. For these reasons it was retained by the present Administration.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 21:

There is no single, comprehensive District Attorney Office policy statement concerning allowable expenditures and payment protocols for the District Attorney's Special Fund.

RESPONSE TO FINDING NO. 21:

The March 1, 1994 District Attorney's Special Appropriation Fund Policy, and subsequent revisions, specifically detail the practice and policy for allowable Special Appropriation Fund expenditures.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 22:

The current District Attorney's Office practice and policy for allowable expenses, the language of Government Code, Section 29404, can be interpreted so broadly as to justify almost any expense.

RESPONSE TO FINDING NO. 22:

The March 1, 1994 District Attorney's Special Appropriation Fund Policy, and subsequent revisions, specify allowable expenditures.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 23:

Current District Attorney's Office practices do not adequately document the nature of the expenditures to be reimbursed from the District Attorney's Special Fund.

RESPONSE TO FINDING NO. 23:

The March 1, 1994 District Attorney's Special Appropriation Fund Policy, and subsequent revisions, specifically detail the documentation required to comply with the policy.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 24:

Chief Blankenship was reimbursed from the District Attorney's Special Fund for numerous, alcohol-only expenses, incurred at meetings at the Elk's Club, bars, and restaurants. Many of the meetings, for which Chief Blankenship received reimbursement for meals and/or alcohol expenses from the special fund, did not concern pending criminal or civil investigations or cases.

RESPONSE TO FINDING NO. 24:

As set forth below, Chief Blankenship was reimbursed for expenses from the special fund; however, all of the expenses concerned pending criminal or civil investigations or cases and all expenditures are in compliance with Office Policy.

Chief Blankenship was reimbursed from the District Attorney's Special Fund for certain expenses, all of which were within the authorization of California Government Code Section 29404, as is required by law and the Office of the District Attorney. Under the Government Code and the Office of the District Attorney Policy regarding allowable expenses, intelligence gathering in high profile and/or political cases, as well as efforts on the part of the Office of the District Attorney to help advance legislation deemed important to the county, are legitimate expenditures. The expenditures of Chief Blankenship fall within this description. Some of the efforts undertaken included garnering and organizing support for the passage of sex crimes bills, including one that extended the statute of limitations on sexual assault cases. This new law has and will enable the office to prosecute sexual predators who would otherwise have escaped justice.

Although the grand jury transcript points out the special fund budget for the 2000/2001 fiscal year was \$90,000, it neglects to clarify that only \$2,605 was actually spent on these efforts by Chief Blankenship, less than 4% of the budgeted amount.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 25:

The monthly travel claims for out-of-county business trip reimbursements are not cross-checked with District Attorney Special Fund expense vouchers to ensure that a claimant does not receive double payment for meals or other expenses. Chief Blankenship received double payment for certain meals, the exact nature and amount is unknown at this time because of inadequate documentation. The monthly travel claims and the District Attorney's Special Fund expense vouchers are submitted to district attorney administrators at different times for processing and payment.

RESPONSE TO FINDING NO. 25:

The Office of the District Attorney follows sound accounting practices concerning expense reimbursements. As with almost any accounting system, however, improvements can be made. The Grand Jury report correctly identified that claims for out of county business trip reimbursements were not cross-checked with the District Attorney's special fund expense vouchers to ensure against double payment. A recent cross-checking of this information has revealed the total amount of overpayments to Chief Blankenship for the entire fiscal year of 2000/2001 to be \$209.65. Upon being informed of this, Chief Blankenship paid the entire sum.

These over payments were the result of a procedural error. A detailed review of the cross-checking revealed that the majority of these overpayments were the result of the submittal of payment receipts and credit card receipts to different people at different times. It was not realized that a few of the same expenses were being reimbursed twice. This procedure has now been corrected for all investigators so that such accounting errors will not recur.

For the reasons indicated above, the Office of the District Attorney disagrees partially with the finding.

FINDING NO. 26:

Members of upper management of the Bureau of Investigation have made job assignments to investigators, supervising district attorney investigators, and commanders in a manner that has by-passed one or more layers of supervision.

RESPONSE TO FINDING NO. 26:

Situations arise where an investigation could be compromised or stalled because one or more levels of the chain of command is unavailable. In those situations, it is prudent for members of upper management of the Bureau of Investigation to make job assignments to investigators, supervising district attorney investigators and commanders in a manner that may by-pass one or more layers of supervision. Indeed, it is an indication of a group working as a team when there is a comfort level in bypassing certain levels of supervision to get a job done

efficiently. Such decisions have not been made to specifically circumvent the chain of command.

For the reasons indicated above, the Office of the District Attorney agrees with the finding.

FINDING NO. 27:

DDA Kay Rackauckas has been permitted a greater level of authority and influence than is characteristic of her job description, which has resulted in circumventing the chain of command.

RESPONSE TO FINDING NO. 27:

This Finding is inaccurate. Ms. Rackauckas was neither given nor permitted a greater level of authority and influence than is characteristics of her job description. As such, there was no “circumventing of the chain of command.” The District Attorney and his executive management at all times made their own decisions within their respective spheres of responsibility.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 28:

Periodic meetings with the Bureau command staff (commanders and above), and between commanders and their respective unit supervisors have not been held

on a consistent basis during the Rackauckas administration. Periodic meetings of this nature benefit the Bureau.

RESPONSE TO FINDING NO. 28:

Periodic meetings with the Bureau command staff, which do occur, are beneficial to the Bureau. It was the intention of Chief Blankenship and the District Attorney to have regularly scheduled meetings as per the February 24, 1999 memorandum from the Chief. When regularly scheduled meetings ceased to be productive they were no longer consistently attended by the entire bureau management team. The Office of the District Attorney holds meetings with the Bureau Command staff whenever meetings are productive and useful.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 29:

There have not been Bureau-generated status reports on significant and/or sensitive cases during a major portion of the Rackauckas administration. Periodic status reports on such cases benefit the District Attorney's Office.

RESPONSE TO FINDING NO. 29:

As set forth below, Chief Blankenship instituted a process to generate reports on a weekly basis.

Bureau-generated status reports on significant and/or sensitive cases are beneficial to the Office of the District Attorney. For that reason, Chief Blankenship (as noted in the Grand Jury Transcript CJ-36) requested his Assistant Chief to have the Commander's contribute to generating a "Critical Incident Report" on a weekly basis. These types of reports had been abandoned at the end of the prior administration, and it was not until early 2002 that Chief Blankenship learned of the report's prior existence. Since February 2002, every Wednesday a "Critical Incident Report" is generated and distributed to the Chief, the Commanders and the Assistant Chiefs. It is the intent of the Bureau to continue generating and distributing this report to the appropriate parties.

For the reasons indicated above, the Office of the District Attorney disagrees partially with the finding.

FINDING NO. 30:

The Organized Crime Unit supervisor reports directly to Chief Blankenship. The Organized Crime Unit handles sensitive cases, including anti-terrorist matters that would require rapid decision making. Chief Blankenship is frequently not in the office because he attends numerous meetings and conferences within the county and outside the county. Chief Blankenship and the respective supervisors of the Organized Crime Unit have not had regularly scheduled periodic meetings to discuss Organize Crime Unit matters.

RESPONSE TO FINDING NO. 30:

As set forth below, Chief Blankenship is available to the unit, regardless of his travels outside the county, and the unit meets regularly with Chief Blankenship.

The investigators in the Organized Crime Unit have complete access to Chief Blankenship whether he is in the office or out of the County. The Chief is always available by phone or pager to assist and give input on those matters that require rapid decision-making in sensitive cases. In fact, the supervising investigator of the Organized Crime Unit meets with the Chief at least three times a week and as often as three times a day.

Regularly scheduled meetings with the Organized Crime Unit are not practical because the investigators in this unit do not have regularly scheduled hours, as they are often on late night surveillance in areas all over Southern California. Accordingly, there are frequent meetings between the Chief and the Organized Crime Unit.

For the reasons indicated above, the Office of the District Attorney disagrees partially with the finding.

FINDING NO. 31:

There is no job description for the position of media relations director.

RESPONSE TO FINDING NO. 31:

This is consistent with the typical practice throughout the County of Orange for staff classified as Executive Assistants.

For the reasons indicated above, the Office of the District Attorney agrees with the finding.

FINDING NO. 32:

There are no minimum qualification criteria for the position.

RESPONSE TO FINDING NO. 32:

Office of the District Attorney's Media Relations Director is classified as an Executive Assistant. The County of Orange Personnel and Salary Resolution, Part 4, Article XXIV, Section 3 addresses Executive Assistants employed by Elected Agency/Department Heads. That section provides as follows:

The determination of the qualifications required and the testing and methods of selection used to appoint employees under this provision are at the discretion of the elected official holding the office to which the employees are appointed.

The District Attorney considered appropriate qualifications for the position in making his decision to appoint the incumbent for this position.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 33:

There are no guidelines regarding the “need to know” limitations of the position of media relations director.

RESPONSE TO FINDING NO. 33:

The Office of the District Attorney deals with sensitive information regarding criminal activities on a daily basis and routinely exercises “need to know” limitations as appropriate for all personnel, including the media relations director.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 34:

The media relations director attended numerous highly sensitive debriefings about criminal investigations/cases.

RESPONSE TO FINDING NO. 34:

At times it is in the best interest of the District Attorney’s Office to have the media relations director attend debriefings on sensitive cases. When needed, the media relations director can assist in the development of an effective strategy to handle media inquiries into these sensitive, typically high profile cases.

For the reasons indicated above, the Office of the District Attorney agrees with the finding.

FINDING NO. 35:

There was no job recruitment or application process, posted or otherwise, for the media relations director position.

RESPONSE TO FINDING NO. 35:

See Response to Finding No. 32.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 36:

The media relations director reports directly to the District Attorney.

RESPONSE TO FINDING NO. 36:

The media relations director does report directly to the District Attorney.

For the reasons indicated above, the Office of the District Attorney agrees with the finding.

FINDING NO. 37:

In the spring recruitment of 1999, the paper screen protocol was changed in order to insure that approximately 5 to 7 candidates, of whom at least two had not qualified under the initial paper screen evaluation, would receive interviews. Two of these persons were given special consideration, in part or in whole,

because of a friend or family member who was a political supporter of Mr. Rackauckas.

RESPONSE TO FINDING NO. 37:

The paper screen process was changed after it was discovered to be flawed. All applications were subject to the revised paper screen criteria. Candidates who advanced to an interview included those with experience warranting an interview.

No candidate received special consideration in the interview process.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 38:

Several other family members of friends and/or political supporters of Mr. Rackauckas have been hired by the District Attorney's Office.

RESPONSE TO FINDING NO. 38:

Each applicant for a position at the Office of the District Attorney goes through the normal recruitment process, which complies with the County of Orange's selection rules. Candidates are interviewed by two prosecutors (an Assistant District Attorney and a Senior Assistant District Attorney). The two interviewing prosecutors have no knowledge of any personal or political connections of the candidates. The District Attorney is responsible for the final selection based

upon individual merit through the recruitment process and at the recommendation of the two interviewers.

All decisions were made strictly based on merit and the recommendations of the interviewers who had no knowledge of any personal or political connections. Mr. Rackauckas regularly encourages qualified people to apply for jobs in the Office.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 39:

Certain spring 1999 recruitment rating worksheets and other hiring materials were lost or misplaced by the District Attorney's Office.

RESPONSE TO FINDING NO. 39:

The Office of the District Attorney follows the County of Orange Policy of Record Retention for Human Resource Documents. In the case of recruitment rating worksheets, the retention period is two years after the eligible list is abolished. The eligible list for spring 1999 was abolished in December 1999. Thus, all worksheets should have been purged in December 2001. Therefore, it is not unusual that they were not available when the Grand Jury requested these materials.

After a diligent and thorough search by the Office of the District Attorney, some of the recruitment materials from 1999 were located as they were not yet purged.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 40:

It is the policy that in the County of Orange departments and agencies hire employees based solely on merit.

RESPONSE TO FINDING NO. 40:

It is the policy and practice of the Office of the District Attorney that employees are hired based solely on merit.

For the reasons indicated above, the Office of the District Attorney agrees with the finding.

FINDING NO. 41:

A highly recommended intern from the Law and Motion Unit was passed over for employment as a deputy district attorney in favor of two law clerks from an informal internship program whose family members were political supporters of Mr. Rackauckas.

RESPONSE TO FINDING NO. 41:

See Response to Finding No. 38.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 42:

There is a negative impact on the ability of the Law and Motion Unit to recruit law students for their formal clerkship program when qualified candidates from the program are not hired when positions are available.

RESPONSE TO FINDING NO. 42:

The Office selects the most highly qualified candidates from a variety of sources, including the law clerk program. The Law and Motion Unit clerkship program of the Office of the District Attorney continues to thrive under the Rackauckas Administration. Each year the number of high caliber law students applying far exceeds the number of clerkship positions available. Law students who participate in formal or informal clerkships are not guaranteed attorney jobs in the Office of the District Attorney. Historically, however, a high percentage of law clerks from the formal program are hired.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 43:

Certain less qualified candidates, who were family members or friends of political supporters or friends of Mr. Rackauckas, were hired as prosecutors over more qualified candidates.

RESPONSE TO FINDING NO. 43:

See Response to Finding No. 38.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 44:

The District Attorney's Office has a policy that employee performance evaluations should be fair and honest.

RESPONSE TO FINDING NO. 44:

Shortly after taking Office, District Attorney Rackauckas noted that there was a tendency on the part of supervisors to inflate ratings of performance evaluations. This practice provides a disservice to both the Office and the individual employee by not directly and appropriately addressing performance issues. To change this Office custom, the District Attorney issued the "Truth in Evaluation" policy mentioned in the Grand Jury report. The policy was disseminated via memorandum on February 23, 1999 and August 27, 1999.

For the reasons indicated above, the Office of the District Attorney agrees with the finding.

FINDING NO. 45:

The MOU requires annual performance evaluations for DDAs from Level I through Level IV, and interim (six months) evaluations are required for non-management probationary employees.

RESPONSE TO FINDING NO. 45:

The MOU does require annual performance evaluations for Deputy District Attorneys from Level 1 through Level IV, and interim (six months) evaluations are required for non-management probationary employees.

For the reasons indicated above, the Office of the District Attorney agrees with the finding.

FINDING NO. 46:

The performance evaluations and/or protocol followed in the two instances described above, violated District Attorney policy and MOU. In the first instance a DDA with a political or friend connection to the District Attorney was inappropriately rated favorably, and in the other, a DDA politically opposed to the District Attorney and a defendant in the Chief Assistant's wife's lawsuit was inappropriately rated negatively.

RESPONSE TO FINDING NO. 46:

There was nothing inappropriate about the ratings of either Deputy District Attorney. It had nothing to do with a relationship between any of these employees and the District Attorney.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 47:

Executive management are not evaluated pursuant to traditional rating categories.

RESPONSE TO FINDING NO. 47:

In August 1999, the County initiated the Management Performance Plan (MPP), a new rating system for all managers, abandoning traditional rating categories in favor of an integrated approach to planning, performance appraisal and pay.

The overall objectives of the MPP plan are identified as follows:

- Establish clear priorities and expectations of performance;
- Actively involve plan participants in the evaluation process;
- Recognize and reward individuals for their contribution to achieving County and department goals;

- Apply sound performance planning techniques linking department planning and budgeting processes to individual manager level;
- Recognize the importance of management and professional skills to the achievement of goals;
- Communicate and apply a consistent approach to planning, motivating, appraising, and regarding County managers;
- Provide local department control for performance pay increases while maintaining County-wide fairness and equity; and
- Link the performance evaluation process for management with performance evaluation for all.

Executive Managers, which in the Office of the District Attorney include: Chief Assistant District Attorney, Bureau Chief, Senior Assistant District Attorney, and Assistant District Attorney, were not required to participate. However, the District Attorney recognized this as a promising tool and exercised the initiative to have all District Attorney Executive Managers use the MPP tool to develop goals and objectives.

For the reasons indicated above, the Office of the District Attorney agrees with the finding.

FINDING NO. 48:

Non-executive management prosecutors and supervising district attorney investigators receive performance evaluations based on specific rating categories.

RESPONSE TO FINDING NO. 48:

Pursuant to the respective Memorandum of Understandings, specific rating categories are utilized in the performance evaluations of non-executive management prosecutors and supervising district attorney investigators and other employees represented by bargaining units.

For the reasons indicated above, the Office of the District Attorney agrees with the finding.

FINDING NO. 49:

According to policy, job related decisions shall be based on merit and prosecutor job assignments/rotations are to be fair.

RESPONSE TO FINDING NO. 49:

It is the policy of the Office of the District Attorney that job related decisions shall be based on merit and prosecutor job assignments/rotations are to be fair.

For the reasons indicated above, the Office of the District Attorney agrees with the finding.

FINDING NO. 50:

An experienced deputy district attorney was not transferred to the Family Protection Unit in early 1999, a position the DDA was qualified for, because the DDA was a named defendant in Chief Assistant Rutledge's wife's civil lawsuit.

RESPONSE TO FINDING NO. 50:

Rotation of Deputy District Attorneys takes place twice a year. Prior to rotation deputies submit an assignment preference sheet indicating places in the Office they may wish to rotate to. With the high number of deputies rotating not everyone transfers to their first, second or even their third choice. The primary consideration in rotations is the "needs of the Office." The Deputy District Attorney in question had valuable past experience in law and motion and was needed in that unit in January of 1999. When the question of moving this deputy came up in March of 1999, Chief Assistant Rutledge was against her transfer, indicating that he felt that she was not qualified, and he had some problems relating to her attitude. When the issue came up again in June of 1999 she was transferred to the Sexual Assault Unit, a premier unit dealing with cases she was highly qualified to prosecute.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 51:

A qualified and recommended deputy for transfer to the Felony Panel did not initially receive such transfer because of information from a defense attorney. The decision not to transfer the DDA to the Felony Panel, based on the defense attorney's information, was made by Mr. Rackauckas without verification or input from the DDA or the DDA's immediate supervisor

RESPONSE TO FINDING NO. 51:

The transfer (rotation to the felony panel) decisions are made based on all the information available regarding individual Deputy District Attorneys. This process is competitive. A deputy must exhibit among other things, the ability to deal effectively with judges, defense attorneys, District Attorney staff and peers. An effective manager will consider information from a variety of sources about a Deputy District Attorney. This information is evaluated to determine if a transfer is appropriate. Judges and defense attorneys often have important information on the effectiveness and professionalism of deputies inside and outside of the courtroom. When a manager, including the District Attorney, receives information regarding inappropriate conduct on the part of a deputy, it may delay a deputy's transfer to the felony panel (or any unit) and require closer supervision of the deputy's interpersonal skills.

In this instance the Deputy District Attorney was having performance issues. The Deputy was counseled by a supervisor and, after six months of service with no further problems, was then transferred to the Felony Panel. The decision to defer

this Deputy's transfer to the Felony Panel was made by the District Attorney after a conference with his senior staff. At the time of this decision, the District Attorney had not received any derogatory information about this particular Deputy from a defense attorney.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 52:

Upper management of the District Attorney's Office had the desktop office computers assigned to Mr. Rutledge and Mr. Wade removed and their hard drives examined, without good cause. Mr. Romney's office-issued desktop computer was also removed without good cause.

RESPONSE TO FINDING NO. 52:

All District Attorney computers are the property of the County of Orange and are to be used for official business. The Office may legally inspect and/or remove any office equipment, including computers, at any time with or without good cause and without notice.

There was good cause for all of the actions that were taken in these cases.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 53:

The \$1,386.84 cost for the Rutledge desktop computer duplicate hard drive and the Rutledge laptop hard drive data retrieval, as well as the investigator's time spent on examining Mr. Rutledge's office-issued computers (at least 20 hours) and Mr. Wade's desktop computer were unjustified and a waste of county resources.

RESPONSE TO FINDING NO. 53:

There was good cause to examine/remove the desktop computers of Mr. Rutledge, Mr. Wade, and Mr. Romney. County agencies have the right to examine any computer that is County property. There were personnel issues regarding the computers in question. In this instance Mr. Rutledge's laptop computer was examined in conjunction with his lawsuit against the County of Orange. The examination revealed that the laptop computer assigned to Mr. Rutledge was being used by his wife to conduct private business. The resulting information supported the need to develop future policy rules regarding the authorized use of office equipment. Both department policy and County policy affirm the County's right to audit and inspect use of County computers. Moreover, the policies specifically state that user's have no expectation of privacy when they use County owned computers.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 54:

There is no District Attorney office policy, protocol, or guidelines which set forth the circumstances, and the level of justification (cause) needed for the administration to cause the forensic examination of the hard drives, and other computer storage medium, of office computers assigned to District Attorney employees. (The computer screen advisory constitutes a warning, not a policy or protocol.)

RESPONSE TO FINDING NO. 54:

All Office of the District Attorney computers are the property of the County of Orange and are to be used for official business. The Office of the District Attorney reserves the right to inspect and/or remove any office equipment, including computers, at any time with or without good cause and without notice based on County policy.

The District Attorney's initial computer screen advisory warning, when considered with the "County's Information Technology Use Policy", is the Orange County District Attorney's policy regarding computer misuse and allows the County to monitor the system at anytime.

Every computer in the Orange County Office of the District Attorney, upon daily initial start-up, displays a banner indicating:

- The computer system belongs to the County of Orange.
- The use of the system is limited to County-related business.

- The County retains the right to access and inspect information on the system.
- The County retains the right to audit, inspect, and monitor each user's use of e-mail, the Internet and the Intranet.
- By using any part of this system the user agrees to limit its use to County business.
- The user has no expectation of privacy in the system.
- The County monitors system usage.
- Unauthorized use of the system may result in disciplinary action.
- The above computer warning banner was installed online in the Orange County Office of the District Attorney's computers on October 9, 2001.

This banner coupled with the "County's Information Technology Use Policy" provides a comprehensive "policy" on the use, misuse, and investigation of computer usage in the Orange County Office of the District Attorney.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 55:

An employee of the District Attorney's Office obtained confidential letters between the Attorney General's Office and the District Attorney's Office, which were improperly disseminated to newspapers with the intent of casting a deputy district attorney, who the office intended to terminate, in a bad public light.

RESPONSE TO FINDING NO. 55

The letters referred to consisted of complaints and responses between two agencies and were not confidential in nature. Neither office requested confidential treatment of these letters. However, a review by an assigned investigator did not reveal the identity of the person or persons who disseminated the materials described. Furthermore, the review did not reveal the intent of the person or persons who disseminated the materials.

For the above reasons, the Office of the District Attorney disagrees wholly with this finding.

FINDING NO. 56:

The District Attorney's Office did not follow through on an investigator's recommendation to conduct an internal investigation to determine who released the confidential documents (AG/DA letters).

RESPONSE TO FINDING NO. 56:

Chief Blankenship did assign an investigator to look into the release of these letters to the newspapers. No leads were developed that would support an investigation.

See Response to Finding No. 55.

For the above reasons, the Office of the District Attorney disagrees wholly with this finding.

FINDING NO. 57:

There has been several instances of confidential District Attorney documents, or other materials, disseminated to the press by unknown employees of the District Attorney's Office, without authorization.

RESPONSE TO FINDING NO. 57:

Office policy strictly prohibits this practice and employees who engage in releasing confidential documents, recordings, and other materials will be disciplined, up to and including discharge.

The dissemination of the documents in the Arnel case violated this policy. (See Response to Finding No. 55)

For the reasons indicated above, the Office of the District Attorney partially agrees with the finding as it relates to the Arnel case.

FINDING NO. 58:

Employees of the District Attorney's Office have searched through other employees' offices, personal belongings, and office-issued computers to obtain documents for dissemination.

RESPONSE TO FINDING NO. 58:

The report contains no facts to substantiate this finding. Any information regarding these alleged activities would be investigated by the Office of the District Attorney, if any evidence were to be forthcoming to support this assertion.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 59:

Mr. Rackauckas' decisions concerning DDA Kay Rackauckas' job rotations violated the County of Orange and the District Attorney's office policies concerning employment of relatives.

RESPONSE TO FINDING NO. 59:

Ms. Rackauckas' job rotation did not violate County of Orange or Office of the District Attorney Policies. Mr. Rackauckas did not hire his wife. Ms. Rackauckas was hired by Mr. Capizzi eight years before Mr. Rackauckas' election. While she was a Deputy District Attorney, Ms. Rackauckas was not directly supervised by the District Attorney. She was never appointed, promoted, reduced, transferred

or reassigned to any position where she was directly supervised by Mr. Rackauckas.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 60:

DDA Kay Rackauckas participated in managerial decisions, especially in the area of personnel, for which she was not entitled as part of her non-management job description. Until DDA Kay Rackauckas was transferred in September 1999 to the Westminster Target/Gang Unit, she spent significant time, almost on a daily basis, in and around the executive offices of the District Attorney's Office.

RESPONSE TO FINDING NO.60:

Ms. Rackauckas did not participate in either personnel or other management decisions. Those decisions were made by the District Attorney and his management team. On occasion, Ms. Rackauckas visited her husband, the District Attorney, in his office.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 61:

There was a pervasive perception within the District Attorney's Office that DDA Kay Rackauckas wielded significant influence in the District Attorney's Office based on her conduct and on her status as wife of the District Attorney.

RESPONSE TO FINDING NO. 61:

There was no such pervasive perception.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 62:

DDA Kay Rackauckas expended significant time during normal business hours discussing and/or working on the Stephanie George campaign for judge against former District Attorney Mike Capizzi. On occasion, DDA Kay Rackauckas used county equipment to facilitate her involvement in the Stephanie George campaign. County of Orange and District Attorney policy prohibits employees from using county time or county resources (e.g., office equipment) to engage in political activities.

RESPONSE TO FINDING NO.62:

The Memorandum of Understanding (MOU) which the attorneys have with the County expressly recognizes that their work may not always follow the patterns of "normal working hours." It may and often does exceed these periods. By the

same token, as partial compensation for the extra hours they often put into their job, in any given week they may occasionally work less than these normal business hours. This concept of “flex time” has been a part of the attorneys’ MOU for over two decades.

Over the years Ms. Rackauckas developed a reputation as an outstanding prosecutor and trial attorney. She did so because she was not limited to normal business hours. As a Deputy District Attorney, Ms. Rackauckas developed the habit of working late nights in preparation for her trials. This included factual and legal analysis of her cases as well as the development of trial tactics and preparation for testimony including direct and cross-examination. It often included conducting much of her own investigation of her cases. It was common for Ms. Rackauckas to be working into the early hours of the morning on her cases. It was also common for her to be out in the field interviewing witnesses or examining crime scenes in preparation for her trials at all hours of the day or night.

There is no indication that any calls Ms. Rackauckas may have made or received from any friends were out of the ordinary, expended significant time, or that they in any way detracted from her work.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 63:

DDA Kay Rackauckas was subject to minimal and inadequate supervision from the commencement of the Rackauckas administration until the transfer to the Felony Charging Unit in October 2000.

RESPONSE TO FINDING NO.63:

Ms. Rackauckas was effectively supervised by Assistant District Attorney Claudia Silbar and Assistant District Attorney Marc Rozenberg while she was a Gang T.A.R.G.E.T. deputy in the Westminster Police Department.

District Attorney Mike Capizzi hired Ms. Rackauckas as a Deputy District Attorney on April 6, 1990. She worked in Family Support and the Municipal Courts for four years. During that time she tried 45 jury trials. In 1995 she was appointed to the Felony Panel where she tried numerous felony jury trials. In 1997 she was assigned to the Sexual Assault unit where she successfully vertically prosecuted many violent sexual offenders. During March 1999, she was assigned to the Felony Projects Unit for six months.

In September 1999, she was assigned to the Westminster Police Department T.A.R.G.E.T. Gang Unit. The Westminster Gang T.A.R.G.E.T. Unit was in bad shape in September 1999. The caseload was down to just a few cases. Ms. Rackauckas was assigned to the unit to determine whether or not the unit could be brought back to life. She was instrumental, along with the Police Department, in raising the caseload and bringing the unit back to a viable gang-fighting tool.

During this period of successful rebuilding she was effectively supervised by Assistant District Attorney Claudia Silbar and Assistant District Attorney Marc Rozenberg.

In October 2000, she was transferred to the Felony Charging Unit. At this point in her career she had tried over 70 jury trials with a 90% conviction rate.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 64:

DDA Kay Rackauckas, while on Leave of Absence, during normal business hours, called district attorney employees on numerous occasions as to Mr. Rackauckas' re-election campaign, including discussing the need and means to obtain endorsements from law enforcement agencies/political associations and the district attorney association.

RESPONSE TO FINDING NO. 64:

Beginning in February 2001, Ms. Rackauckas was on Leave of Absence from the Office. When employees of the Office of the District Attorney are on leave, they are free to spend their time in any lawful manner, including speaking with friends in the Office.

(See Response to Finding No. 62)

For the reasons indicated above, the Office of the District Attorney disagrees partially with the finding.

FINDING NO. 65:

While on her leave of absence, DDA Kay Rackauckas requested or instructed senior prosecutors, at her job classification or higher, to perform tasks.

RESPONSE TO FINDING NO. 65:

The Office disagrees with the words “or instructed” in the finding. The word “instructed” in the context of the finding could be construed as “ordered”. In the only two specific instances cited in the body of the Grand Jury report, the author describes the conversations as a request. A “request” is in fact the correct characterization of the conversations.

In the instance cited in the Grand Jury report, and that underlies this finding, the following important facts are omitted from the Finding:

- The question posed was a legitimate legal question as to restrictions placed on a District Attorney.
- The Deputy District Attorney to whom the request was made was in the unit (Felony Projects) that routinely handles these questions.
- It would have been appropriate for any Deputy District Attorney to have posed this question to the Felony Projects Unit.
- The request was approved by a Senior Assistant District Attorney.

- The Deputy District Attorney to whom the request was made indicated that he would have done the requested research for any Deputy District Attorney.
- The results of the research were given to the Senior Assistant District Attorney, not Ms. Rackauckas.

For the reasons indicated above, the Office of the District Attorney disagrees partially with the finding.

FINDING NO. 66:

DDA Kay Rackauckas' interaction with district attorney personnel, as described above, had a negative impact on the effective operation of the District Attorney's Office and on office morale.

RESPONSE TO FINDING NO. 66:

As detailed in the introduction of the District Attorney response to the Grand Jury report, the effectiveness of the operations and morale remains at a very high level.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 67:

The stated objectives of the Tony Rackauckas Foundation were laudatory.

RESPONSE TO FINDING NO. 67:

The objectives of the Tony Rackauckas Foundation were laudatory. This Foundation would have saved young lives.

Mr. Rackauckas has always felt that the cause of public safety, law enforcement, and justice are best served by not limiting our efforts to simply putting people in jail or prison. He strongly believes that we need to be pro-active in addressing the causes of crime. Reaching out to young people to try to help them avoid life styles that threaten to envelop them in criminal conduct is an effort we must make. If we avoid making this effort we do so at our own peril, or that of our children. The objective and purpose of the Foundation was to reach out to kids; to give them good role models; to keep them straight. The District Attorney agrees with the finding that these are laudatory goals.

He considers gang violence to be the primary threat to the safety and security of our community. With the rise in population of children approaching the ages of 14 to 15 years the possibility of increasing gang activity is very real. It is well known that young males aged 14 to 24 represent the portion of our population with the greatest propensity to commit crimes, and joining gangs is the primary way that these children become career criminals. If there is a way to prevent the loss of these young people to lives of crime, that attempt ought to be made. That is what Mr. Rackauckas and others tried to do with the Foundation.

We clearly need to pay as much attention to these children as possible. They need role models from the community that are successful in the various walks of

life. They need mentors to steer them in the right direction: away from gangs and into productive lives. Otherwise, there is a very real danger that they will look to gang members, not to us, as their role models. The failure to act now therefore threatens dire consequences in the future both for them and for society as a whole.

The Foundation was created to work towards the goal of “keeping kids straight.” Mr. Rackauckas had found that many responsible members of our community agree with this goal and are willing to put their time, talent and treasures into this effort.

For the reasons indicated above, the Office of the District Attorney agrees with the finding.

FINDING NO. 68:

The Foundation was poorly organized. Directors and officers were self-appointed or elected contrary to an applicable California Corporations Code statute or the Foundation’s own by-laws.

RESPONSE TO FINDING NO. 68:

The Tony Rackauckas Foundation was a private Foundation, funded with private contributions from private individuals. It was organized by well-meaning members of the Orange County community. Its purpose was to support crime prevention programs. Although Mr. Rackauckas’ name was used, he did not serve as an officer and was not an organizer of the Foundation. All funds were

accounted for and any mistakes were remedied before the Foundation was dissolved.

The well meaning and altruistic organizers of the Foundation retained legal counsel to help them with the necessary incorporation and legal requirements of organizing a charitable foundation. Although this attorney is very competent, unfortunately the incorporation process was not completed because once the Foundation came under outside political attack, the Foundation's activities all ground to a halt because the volunteer business leaders withdrew from Foundation involvement. For that reason, certain California requirements for charitable foundation organizations were not completed and the Foundation was dissolved.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 69:

The objectives of the Foundation were poorly implemented.

RESPONSE TO FINDING NO. 69:

The politically charged accusations, which mischaracterized the purposes of the Foundation, were made during the time that the Foundation was in the process of implementing its programs. When an investigation began the District Attorney recommended to the Foundation organizers that they cease their activities

pending the outcome of the investigation. It was contemplated that the Foundation would resume implementing its objectives after the investigation.

Prior to the commencement of the investigation the Foundation had started some very good programs. A fine motivational public speaker who is a former gang member had made several inspirational speeches to large groups of kids. These presentations on behalf of the Foundation were very well received by the schools and community groups where they were given. Other programs, such as gang tattoo removal, were in their beginning stages.

The Foundation organizers opened all of the books and papers of the Foundation and made themselves and the Foundation members available to the Attorney General's Office for any inquiry that might be made. The investigation lasted for several months. Every person who had any connection with the Foundation was interrogated by the Attorney General's Office. Sometimes these sessions lasted for several hours. The responsible and well-meaning contributors, most of whom were successful business people became very uncomfortable with these proceedings.

Under these circumstances the membership and organizers of the Foundation decided that they would like to terminate the Foundation. When counsel for the Foundation suggested to the Deputy Attorney General in charge that they wished to terminate the Foundation they were told that they could not terminate the Foundation without the consent and coordination of the Attorney General's Office. Sometime later the Attorney General's Office did agree to allow the

Foundation to dissolve and termination proceedings were commenced. The programs that the Foundation had embarked upon were never resumed. This well-intentioned initiative, born of the genuine desire and willingness of a few decent people to do good, never came to fruition.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 70:

Under the circumstances of the creation and operation of the Tony Rackauckas Foundation, the use of significant District Attorney resources, and attaching the name of the elected District Attorney to the Foundation, were ill advised. District Attorney office resources were wasted, except those expended to obtain firearms training and to coordinate the motivational speeches. Use of District Attorney resources under the circumstances, and the controversy over giving wallet badges to commissioners, caused grave concerns within the District Attorney's office over the appropriateness of the District Attorney's office participation in the Foundation.

RESPONSE TO FINDING NO. 70:

Minimal District Attorney resources were used to support the Foundation. Although the purpose was to benefit the community, it became apparent to the leadership for the Foundation that they would be unable to meet their objectives and the Foundation was subsequently dissolved.

The organizers of the Foundation suggested that Foundation supporters be recognized with a commemorative badge. This practice is common for law enforcement affiliated organizations throughout the United States as well as in California and Orange County. In this instance, badges were mounted on plaques to be hung on a wall. There were never any reported instances of a Foundation member displaying this plaque for an untoward purpose.

The Tony Rackauckas Foundation was a private Foundation, funded with private contributions from private individuals. It was organized by well-meaning members of the Orange County community. Its purpose was to support crime prevention programs. Although Mr. Rackauckas' name was used, he did not serve as an officer and was not an organizer of the Foundation. All funds were accounted for and any mistakes were remedied before the Foundation was dissolved.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 71:

The District Attorney's Office 2000 Annual Charitable Activities Report submitted to the Board of Supervisors was inaccurate. Hours expended by District Attorney employees and office resources used, in support of the Foundation were not documented at the time.

RESPONSE TO FINDING NO. 71:

A good faith attempt was made to estimate the hours expended by the District Attorney employees and office resources used in support of the Foundation. Moreover, the report presented to the Board of Supervisors clearly indicated that the hours and associated costs were estimates.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 72:

The initial decision to give out badges in wallets to commissioners exhibited poor judgment.

RESPONSE TO FINDING NO. 72:

This finding implies that badges were provided to unauthorized persons. This was never the case. Wallet badges were not issued to Commissioners. The organizers of the Foundation suggested that Foundation supporters be recognized with a commemorative badge. This practice is common for law enforcement affiliated organizations throughout the United States as well as California and Orange County. In this instance, badges were mounted on plaques to be hung on a wall. There were never any reported instances of a Foundation member displaying this plaque for an untoward purpose.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 73:

The District Attorney Office should not have investigated the extortion case (victim Mr. DiCarlo) nor assigned it to the Organized Crime Unit because of Mr. Rackauckas' close personal friendship with Mr. DiCarlo, the DiCarlo family involvement in the District Attorney campaign, and the rancorous history between Mr. DiCarlo and the Organized Crime Unit. The case should have been submitted to the Newport Beach Police Department (original jurisdiction) or another agency such as the State Attorney General, the FBI, or the U.S. Attorney.

RESPONSE TO FINDING NO. 73:

When the head of a law enforcement agency receives a complaint from a person who has been the victim of a crime within the jurisdiction, some action should be taken. The fact that the victim may be a friend of the person in charge should not prevent the agency from making further inquiries or conducting an investigation into the matter. It is not a conflict of interest to determine whether or not a crime has been committed upon a person within the jurisdiction – even if that person is a friend. Otherwise, the mere fact of a friendship would diminish the victim's right to justice.

On the other hand, if a personal friend of the head of the law enforcement agency suspected of wrongdoing, that investigation should be referred to an independent agency, if possible, to avoid the appearance of any conflict of interest.

For the reasons stated above, the Office of the District Attorney disagrees wholly with this finding.

FINDING NO. 74:

At the time that the lead investigator focused his suspicions upon Mr. DiCarlo, the case should have been immediately referred to another agency because of the circumstances referred to in Finding No. 1.

RESPONSE TO FINDING NO. 74:

The District Attorney agrees that an investigation into any alleged wrongdoing on the part of Mr. DiCarlo should be referred to another agency. However, the expression of a generalized suspicion in the absence of specific evidence would not necessarily warrant an immediate referral to another agency. At the time such generalized suspicion was brought to his attention, the District Attorney requested to review a copy of the tape recording of the interview to ascertain if there was any evidence for this generalized suspicion. The District Attorney needed to hear the tape to determine the threshold question of whether there was any specific basis for legitimate suspicion of wrongdoing. The tape was intentionally withheld from the District Attorney.

In fact, the investigator tasked with investigating whether or not Mr. DiCarlo had been the victim, began, without authorization, his own investigation to generate suspicion against Mr. DiCarlo.

The District Attorney simply could not allow such an investigation to continue. To do so would engage his Office in a potential conflict of interest.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 75:

Upper management's misleading statements to members of the Organized Crime Unit as to closing down the investigation fueled certain members of the

Organized Crime Unit's distrust in the manner in which the administration would handle the DiCarlo case.

RESPONSE TO FINDING NO. 75:

Statements made to members of the Organized Crime Unit did not fuel distrust in the manner in which the Office would handle the DiCarlo case.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 76:

Mr. Rackauckas gave, or assisted in the recording of a transfer of, a semiautomatic handgun to Mr. DiCarlo around the time that the Organized Crime Unit was investigating extortion threats and whether Mr. DiCarlo was engaged in criminal conduct.

RESPONSE TO FINDING NO. 76:

There was no finding that Mr. DiCarlo engaged in any wrongdoing. The gun was a birthday gift, its timing was generated by that occasion. The manner in which it was given was in accordance with all applicable laws, regulations and County policies.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 77

Mr. Rackauckas and Mr. Clesceri met with Mr. DiCarlo's business associate on April 25, 2000, in part to investigate whether an Organized Crime investigator had improperly continued to investigate the DiCarlo matter after being taken off the case.

RESPONSE TO FINDING NO. 77:

The District Attorney and Mr. Clesceri did meet with a business associate of Mr. DiCarlo for the purpose of inquiring whether an organized crime investigator had contacted him regarding Mr. DiCarlo. The concern was over potential liability for the County of Orange and the Office of the District Attorney.

For the reasons indicated above, the Office of the District Attorney agrees with the finding.

FINDING NO. 78:

The inactive and active Organized Crime Unit files were poorly organized and not electronically indexed on a computer database as of April 2000.

RESPONSE TO FINDING NO. 78:

When Mr. Blankenship took over as Chief the Organized Crime Unit files were poorly organized by the prior Administration.

Since that time Chief Blankenship has directed the reorganization of the Organized Crime Unit files. This reorganization is in line with grand jury

recommendation number 57. The reorganization is currently in its final phase which entails the addition of an electronic index.

For the reasons indicated above, the Office of the District Attorney agrees with the finding.

FINDING NO. 79:

Mr. Rackauckas and Mr. Patterson negotiated terms of settlement in the Arnel case, a highly complex case in a very specialized area of the law, without the presence of District Attorney's office attorneys and staff who possessed the necessary expertise in the area.

RESPONSE TO FINDING NO. 79:

The practice of the Consumer Fraud Unit is to deter illegal activity as quickly and as thoroughly as possible. The case against the Arnel Management Company had the potential to require the commitment of substantial resources. As such, it was appropriate that the District Attorney personally assure himself that the overall interests of justice were served. The District Attorney felt it appropriate that this case should be overseen by the higher levels of management. Prior to the negotiations, the District Attorney and Senior Assistant District Attorney in charge of the Consumer Fraud Unit reviewed and familiarized themselves with all of the relevant case materials.

In addition direct communications were maintained, both before and after these meetings, with the line Deputy District Attorney and the Assistant District Attorney supervising the Consumer/Environmental Unit.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 80:

At the time of the settlement negotiations between Mr. Rackauckas, Mr. Patterson, Mr. Hampel and Mr. Stokke, District Attorney office prosecutors, who were handling the case and had the required expertise in consumer fraud, were not informed of the negotiations.

RESPONSE TO FINDING NO.80:

The District Attorney informed the Assistant District Attorney supervising the Consumer Fraud Unit of his intention to engage in negotiations to explore the possibility of a settlement.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 81:

There were stark, contrasting views as to what had been orally agreed to during the February 6 and February 8 meetings as to injunctive relief between

Mr. Rackauckas and Mr. Patterson on one hand, and Arnel's attorneys on the other.

RESPONSE TO FINDING NO. 81:

As related in the text of the Grand Jury Report (pp. 92-93), the only difference between the parties, concerning what had been "orally agreed to" at the February 6th and 8th meetings was the issue of an injunction. The lawyers for Arnel did not want an injunction that extended in perpetuity, while the District Attorney would forego using the term "injunction" for some other mechanism to verify compliance. Discussions continued after these meetings with a view toward settlement. Finally, in a discussion with the Senior Assistant District Attorney, one of the lawyers for Arnel relented on the issue of an injunction, so long as it was not in perpetuity.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 82:

Oral agreements between prosecutors and defense counsel are a normal part of the practice in Orange County. For the integrity and efficient running of the justice system, prosecution and defense counsel must abide by their oral agreements.

RESPONSE TO FINDING NO. 82:

The District Attorney agrees that oral agreements between prosecutors and defense counsel are a normal part of practice in Orange County. The District Attorney also agrees that ordinarily prosecutors and defense counsel should abide by their oral agreements. However, oral settlement agreements are not binding on either side until the court finalizes them. It may not be in the interest of justice to continue to abide by the terms of a non-binding oral agreement were subsequent facts disclose a significant change of circumstances, e.g., where new information shows that the defendant is not guilty or significantly more culpable than previously believed.

For the reasons indicated above, the Office of the District Attorney disagrees partially with the finding.

FINDING NO. 83:

At the time that Mr. Rackauckas and Mr. Patterson took over the settlement negotiations of the Arnel case, Mr. Rackauckas did not pay proper attention to a possible appearance of impropriety based on Arnel Management Company contributing \$1,000 to his campaign, Rackauckas being one of the ballot spokespersons in opposition to Measure F, and Mr. Stokke being a significant campaign contributor as well as co-hosting a very lucrative fund-raiser for Mr. Rackauckas.

RESPONSE TO FINDING NO. 83:

A conflict of interest did not exist in the Arnel case. As the Grand Jury report makes clear (page 95), the District Attorney knew Mr. Argyros only in passing from attending several common functions or events. They were not and are not close personal friends.

In the 1998 and 2002 elections for District Attorney, Mr. Argyros was one of over 300 people who contributed \$1,000 to Mr. Rackauckas' campaigns. Neither that contribution nor any contribution has affected the District Attorney's decisions.

Measure F had no connection whatsoever with the Arnel case. The District Attorney's position on Measure F created neither the reality nor appearance of a conflict of interest. Measure F was a ballot initiative that would make it extremely difficult to construct jail space anywhere in Orange County. The District Attorney's position on that measure was taken for reasons of public safety. Additional jail space may become necessary to ensure public safety.

Finally, the District Attorney disagrees that because one of Arnel's attorney's participated in a fundraiser that a conflict of interest or the appearance of a conflict was created. Many attorneys supported the District Attorney's campaign to reform the Office of the District Attorney and to set it on a new course that emphasized violent crime, gang suppression, environmental protection, and family support. No favorable treatment was ever expected or given for such support. The District Attorney's final offer for monetary settlement, which

exceeded the settlement between Arnel and the Attorney General, demonstrates this point.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 84:

It is the practice of the Orange County District Attorney's Office and the California Attorney General's Office to obtain injunctive relief as part of a settlement in a consumer fraud case.

RESPONSE TO FINDING NO. 84:

The policy and practice of the Office of the District Attorney is to secure injunctive relief in consumer fraud cases where appropriate and necessary to prevent or deter future similar wrongdoing. Where injunctive relief is not necessary to attain these goals it may not always be sought. The District Attorney has no comment on the policies or practices of the Attorney General in this regard.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 85:

Mr. Rackauckas agreed to dismiss a domestic violence case without consulting with the line deputy, or the line deputy's supervisor, and did not inform these individuals of his decision to dismiss. Mr. Rackauckas did not document his

decision to dismiss, or his reasons for such decision, in the district attorney case file. Mr. Rackauckas' friend and campaign supporter informed the line deputy of Mr. Rackauckas' decision. The dismissal of the domestic violence case was inconsistent with the standard practice of the District Attorney's Office in similar domestic violence cases.

RESPONSE TO FINDING NO. 85:

As the elected District Attorney and a victim advocate, Mr. Rackauckas, has the desire, the authority, and the prerogative to work with crime victims. Any victim can communicate with the District Attorney. Mr. Rackauckas will in appropriate cases involve himself as an advocate for the victim. This was done in that case. The suspect was required to complete anger management classes and comply with other probation-like terms before his case was dismissed. The victim in this case was elated that the disposition she desired was accomplished. The disposition should have been documented in the file and immediately communicated to the line Deputy District Attorney. This will occur in the future.

For the reasons indicated above, the Office of the District Attorney disagrees partially with the finding.

FINDING NO. 86:

There was an appearance of impropriety surrounding Mr. Rackauckas' decision to dismiss the domestic violence because of the fact the case was dismissed in relationship to normal practice in similar cases, the decision to dismiss was made

at a meeting attended by the victim and a campaign supporter/friend, and in the manner in which Mr. Rackauckas' decision was conveyed to the line deputy.

RESPONSE TO FINDING NO. 86:

As the elected District Attorney and a victim advocate, Mr. Rackauckas, has the desire, the authority, and the prerogative to talk with crime victims. Any victim can communicate with the District Attorney. Mr. Rackauckas will in appropriate cases involve himself as an advocate for the victim. That was done in this case. The suspect was required to complete anger management classes and comply with other probation-like terms before his case was dismissed. The victim in this case was elated that the disposition she desired was accomplished. The disposition should have been immediately communicated to the line Deputy District Attorney. This will occur in the future.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 87:

Then Chief Assistant Rutledge agreed to a misdemeanor disposition in a 16-count felony (auto burglaries, etc.) case without consulting with the deputy(ies) handling the case, or any of the managers below him in the chain of command, who had previously rejected defense's entreaties for special consideration. Mr. Rutledge did not inform these district attorney employees of his decision. Mr. Rutledge did not document the disposition agreement, nor the

reasons for the disposition, in the district attorney case file. Although senior management questioned the appropriateness of the disposition after Mr. Rutledge's last day at the District Attorney's Office (on or about January 14, 2000), no one at the District Attorney's Office contacted Mr. Rutledge to verify the terms of the disposition.

RESPONSE TO FINDING NO. 87:

Chief Assistant District Attorney Rutledge, the second highest-ranking administrator in the office, agreed to a misdemeanor disposition in a 16-count felony (auto burglary, etc.) case. The District Attorney had nothing to do with this disposition. Mr. Rutledge proposed and agreed to this disposition with the defense attorney without consulting with the District Attorney. Mr. Rutledge did not consult with the deputies handling the case or any of the managers in the chain of command. Mr. Rutledge did not document his decision or the reasons for his decision in the file and subsequently left the Office. The defense attorney and the defendant relied upon Mr. Rutledge's representations and paid out of pocket restitution to the victims in the case. In addition, the victims consented to this disposition of the case.

To repudiate the Chief Assistant District Attorney's offer to the defense attorney at that point in this case would have been unethical.

For the reasons indicated above, the Office of the District Attorney disagrees partially with the finding.

FINDING NO. 88:

The terms of the misdemeanor disposition in the 16-count felony case were significantly less, as to the nature of the charges pled to, and the degree of punishment, as compared to similar multiple count felony cases.

RESPONSE TO FINDING NO. 88:

The matter referred to in Finding Number 88 was not decided by Mr. Rackauckas. The disposition of every case is uniquely considered based upon the crime committed, the victims, the deterrent impact of a particular disposition upon the perpetrator and others similarly situated, and the overall interests of justice. (Please see response to Finding Number 87). Since Mr. Rutledge agreed to the terms of the disposition, the Office was bound to follow those terms.

For the reasons indicated above, the Office of the District Attorney disagrees partially with the finding.

FINDING NO. 89:

The defense attorney, who discussed settlement with Mr. Rackauckas, and negotiated terms of settlement with Mr. Rutledge, contributed in excess of \$1,000 to Mr. Rackauckas' initial district attorney campaign and co-hosted a fund-raiser for Mr. Rackauckas. The defense counsel did not act improperly in the matter in which he sought the best possible terms of disposition for his client.

RESPONSE TO FINDING NO. 89:

The District Attorney did not discuss settlement of the 16-count case with the defense attorney. Chief Assistant District Attorney Rutledge personally negotiated the terms of settlement. The District Attorney did not have knowledge of the terms of settlement.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO.90:

It is proper for a prosecutor to consider as one factor, out of many, the impact of terms of a disposition on a person's career.

RESPONSE TO FINDING NO.90:

The Office of the District Attorney agrees with this finding.

FINDING NO. 91:

The senior assistant district attorney's request that a victim deputy district attorney agree to a "civil compromise," in the standard hit and run case, influenced the victim deputy district attorney to accept the "civil compromise" where he/she otherwise would not have done so. The senior assistant district attorney did not document his/her reasons for wanting a "civil compromise" of a district attorney office case file. The immediate family of the defendant included prominent members of the Orange County legal community.

RESPONSE TO FINDING NO. 91:

There was no attempt to sway a Deputy District Attorney into accepting restitution for her car being scratched in a parking lot. She received full out of pocket restitution.

This was a very minor case. A Deputy District Attorney's car was scratched as the other driver attempted to park his car in a small parking stall. The other driver, a disabled veteran, was over 75 years old and had neither a prior criminal nor poor driving record. The Deputy District Attorney indicated that the civil compromise was acceptable with "out of pocket" restitution. The restitution was completed and the case was dismissed.

This disposition is well within the range of a "Standard Disposition" in the Orange County Office of the District Attorney. Senior management was involved in this manner matter because the line supervisor in the branch court had a conflict.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

FINDING NO. 92:

A standard offer in a vehicle, property damage only, hit and run case, at a minimum, is three years probation and restitution. A "civil compromise" disposition under circumstances of the particular hit and run case does not conform to the standard practices of the District Attorney's Office in similar cases.

RESPONSE TO FINDING NO. 92:

See Response to Finding No. 91.

For the reasons indicated above, the Office of the District Attorney disagrees wholly with the finding.

RESPONSE TO RECOMMENDATIONS

RECOMMENDATION NO. 1:

Ensure that all job categories within the organization are defined according to specific activities that can be evaluated during performance evaluation, within formal job descriptions. (Findings 1 and 4)

RESPONSE TO RECOMMENDATION NO. 1:

The County Executive Office's Department of Human Resources is responsible for maintaining a classification and compensation system for the County of Orange. We will continue to comply with the rules and regulations of the County's system.

This process was already in place before the Grand Jury Report; therefore, the recommendation will not be implemented because it is not warranted.

RECOMMENDATION NO. 2:

A formal and specific job description should accompany proposals for new or reclassified job categories. (Findings 1 and 4)

RESPONSE TO RECOMMENDATION NO. 2:

As stated in the Response to Recommendation No. 1, the Office of the District Attorney has and will continue to follow County of Orange policies regarding all Human Resources issues.

For the reasons indicated above, the recommendation has been implemented.

RECOMMENDATION NO. 3:

Reclassify the ADA position to eliminate its “at will” status, thereby establishing civil service protection for this job classification and eliminating the need for adjunct verbal agreements. The good cause for demotion/termination or “at will” attributes of District Attorney management positions should reflect the need for honest, open communication without fear of retribution. Promotion, demotion, and transfer should be based solely on merit. (Findings 1, 2, 3, 5, 6, and 7)

RESPONSE TO RECOMMENDATION NO. 3:

The County of Orange does not offer “civil service protection”; rather, it operates as a state approved merit system.

The People of Orange County elect the District Attorney to carry out his stated vision of the Office. In order to achieve this vision, the District Attorney selects leaders with management ability that share a commitment to achieving this vision. The Executive Manager classification allows the elected District Attorney to select managers to assist him in executing the will of the People.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 4:

Require an open recruitment process for senior ADA and ADA employees that includes formal interviews with standardized criteria and evaluation techniques. (Findings 3 and 7)

RESPONSE TO RECOMMENDATION NO. 4:

Although the Office of the District Attorney is open to considering candidates for Senior Assistant District Attorney or Assistant District Attorney from outside the Office, the preference is to provide promotional opportunities for Deputy District Attorneys within the Office. The current recruitment process for Senior Assistant District Attorney and Assistant District Attorney includes a notification of the promotional opportunity to all Deputy District Attorneys in the Office. The District Attorney interviews every interested candidate. These positions are Executive Managers (see Response to Recommendation No. 3); a rigid structure requiring standardized criteria is not appropriate. This process complies with the County of Orange's rules for recruitment and selection.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 5:

Where there is a change in district attorney administrations, former management of the prior administration should be made to feel welcome and should be given

the opportunity to contribute to the District Attorney's Office in a manner befitting their capabilities. (Finding 6)

RESPONSE TO RECOMMENDATION NO. 5:

Management from the prior Administration was made to feel welcome and given an opportunity to contribute to the Office of the District Attorney. In January 1999, 13 of the existing attorney managers were retained. Three of the four Senior Assistant District Attorneys appointed, and the Chief Assistant, the position second only to the District Attorney, were former managers in the previous Administration. The placement of managers within the organization is critical to achieving the organization's mission and goals as staff are placed in positions befitting their capabilities and in the best interest of the Office.

This process was already in place before the Grand Jury Report; therefore, the recommendation will not be implemented because it is not warranted.

RECOMMENDATION NO. 6:

An open hiring process with applications and formal interviews should be part of the hiring process for District Attorney investigative command positions, whether permanent or acting positions. (Findings 9 through 11)

RESPONSE TO RECOMMENDATION NO. 6:

A formalized recruitment and promotional process is currently in place. A restructuring of the process was undertaken in the early months of 1999. The

current recruitment and promotional standard adheres to Board of Supervisors approved minimum qualifications, and includes specific job characteristics, job duties, competency requirements, special requirements, as well as preferred qualifications. County of Orange job applications, structured oral board examinations and resumes, when requested, are required. The process is conducted by the Office's Human Resources Unit and complies with the County's selection rules. We will continue to follow this process.

This process was already in place before the Grand Jury Report; therefore, the recommendation will not be implemented because it is not warranted.

RECOMMENDATION NO. 7:

The hiring of investigative command staff should be based solely on merit, with a significant weight given to command supervisory experience. (Findings 9 through 11)

RESPONSE TO RECOMMENDATION NO. 7:

The hiring of investigative command staff has been and will continue to be based solely on merit, with a significant weight given to command supervisory experience. A resume prerequisite was added to the process in an effort to assist in the evaluation of the candidate's merit based on training, education, and experience.

This process was already in place before the Grand Jury Report; therefore, the recommendation will not be implemented because it is not warranted.

RECOMMENDATION NO. 8:

When there is a change in administrations, the new administration should welcome existing investigative supervisory employees and afford them an opportunity to contribute to the District Attorney's Office in a manner befitting their capabilities. (Finding 12)

RESPONSE TO RECOMMENDATION NO. 8:

This Administration welcomed existing investigative supervisory employees and afforded them an opportunity to contribute to the Office of the District Attorney in a manner befitting their capabilities.

This process was already in place before the Grand Jury Report; therefore, the recommendation will not be implemented because it is not warranted.

RECOMMENDATION NO. 9:

The District Attorney's Office should enact a comprehensive written policy concerning the inappropriate use of county time, equipment, and resources. The policy should define appropriate disciplinary action for misuse of county time, equipment, and resources. (Findings 13 through 15)

RESPONSE TO RECOMMENDATION NO. 9:

In determining the appropriate level of discipline, the Office of the District Attorney follows the County of Orange's policy of progressive discipline. Progressive discipline requires disciplinary issues be handled on a case-by-case

basis. A policy statement outlining specific discipline for varying degrees of prohibited use of county time, equipment, or other resources would not comply with policies of the County of Orange. The application of progressive discipline requires County agencies to take a number of factors into consideration in making a decision on the appropriate level of discipline. The progressive discipline model is commonly used in the public and private sectors and is imbedded in the various Memorandum of Understanding with the County's labor organizations. Therefore, the establishment of a policy statement or matrix indicating the varying degree of discipline for specific activities would not conform to County policy.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 10:

A training manual should be prepared which describes department policies and procedures concerning inappropriate use of department time, equipment, and resources. (Findings 13 through 16)

RESPONSE TO RECOMMENDATION NO. 10:

The substance of this recommendation was being implemented prior to the 2001-2002 Grand Jury Report. During the last year various existing policy and procedure manuals have been combined with other materials into a comprehensive training and policy manual. This manual includes, among many

other items, policies and procedures concerning the inappropriate use of department time, equipment, and resources.

This process was already in place before the Grand Jury Report; therefore, the recommendation will not be implemented because it is not warranted.

RECOMMENDATION NO. 11:

There should be a training program instituted that gives verbal instructions on the inappropriate use of county time, equipment, and resources to all employees.

(Findings 13 through 16)

RESPONSE TO RECOMMENDATION NO. 11:

The quality and the amount of Orange County District Attorney training increased exponentially in the late 2000. We began implementation of the content of this recommendation in October 2000. The training includes verbal instruction and testing regarding ethics which includes the improper use of county resources. We are currently insuring that all employees receive updated training in this area. Our training directors were not offered an opportunity to present this information to the 2001-2002 Grand Jury.

This process was already in place before the Grand Jury Report; therefore, the recommendation will not be implemented because it is not warranted.

RECOMMENDATION NO. 12:

A written policy should be established as to the types of inquiries and investigations to which investigators can be assigned. (Findings 17 through 19)

RESPONSE TO RECOMMENDATION NO. 12:

It is impossible to foresee every type of inquiry or investigation which may arise in the future. The possibilities of facts and circumstances surrounding the necessity to inquire or investigate are infinite.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 13:

Any employee of the District Attorney's Office, who has a close personal or business connection to any subject of, or person involved in the circumstances of, an inquiry or investigation, should not participate in the decision to conduct an inquiry or investigation, or otherwise participate in the investigation or inquiry in any way. (Findings 17 through 19)

RESPONSE TO RECOMMENDATION NO. 13:

It has been the long standing policy of the Office of the District Attorney to avoid the impropriety and the appearance of impropriety in investigating or prosecuting a case where the investigator or attorney has a close personal or business connection to the investigation or prosecution. We will continue to apply this

policy. This recommendation, however, goes considerably beyond the proper policy. It would, for example foreclose the District Attorney from even determining whether a case should be referred to another agency.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 14:

District attorney investigators should document their time spent on inquiries, investigations, or cases on time sheets or other logs to be maintained by the District Attorney's Office. (Finding 20)

RESPONSE TO RECOMMENDATION NO. 14:

This was a long-standing practice. The prior Administration did away with the practice after analysis found it to be time consuming, inefficient, and non-productive on standard criminal cases. The Bureau however, maintains the practice of documenting case actions, to include time expended on Special Assignment cases. The Bureau also currently has a monthly statistical reporting process in place. The unit supervisor requires investigators, under their supervision, to submit accurate and detailed monthly statistics by category, regardless of the type of criminal investigation. These statistics reflect the amount of time spent various job categories. We recognize the need for accountability and will continue to do so.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 15:

The District Attorney's Office should re-enact or reactivate the more restrictive and comprehensive March 1, 1994 policy concerning allowable expenditures and payment protocol for the District Attorney's Special Fund. (Findings 21 through 24)

RESPONSE TO RECOMMENDATION NO. 15:

The March 1, 1994 District Attorney Special Appropriation Fund Policy was revised in July 2002. The implementation of this recommendation included a training session for all Command staff and Supervising Investigators in August 2002. Therefore, there is no need to reactivate the 1994 policy.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 16:

Except where necessary in undercover operations and the use of confidential informants in pending criminal investigations and cases, the District Attorney's Special Fund should not be used for meetings where food and alcohol expenses are incurred. (Findings 21 through 24)

RESPONSE TO RECOMMENDATION NO. 16:

In accordance with the revised District Attorney Special Appropriation Fund Policy, there are certain circumstances in which these funds may be used for meetings where such expenses are incurred.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 17:

The District Attorney's Office should establish a protocol where monthly travel expense claims are cross-checked with District Attorney's Special Fund Expense vouchers, or any other expense vouchers from special funds, to ensure that a claimant is not paid twice for the same expense. Documentation as to expenses for special fund expenditures and travel claims should be submitted on a weekly basis to facilitate cross-checking of claims. (Finding 25)

RESPONSE TO RECOMMENDATION NO. 17:

The July 2002 revision of the March 1, 1994 District Attorney Special Appropriation Fund Policy implemented this recommendation with a detailed specification of protocols and auditing processes. This will ensure that all Special Appropriate Fund claims will be cross-checked. Additionally, a training session for all Command staff and Supervising Investigators reviewing this aspect of the revised policy was conducted in August 2002.

For the reasons indicated above, the recommendation has been implemented.

RECOMMENDATION NO. 18:

The District Attorney's Office should investigate the extent of double payments to Chief Blankenship for meals, and have Chief Blankenship reimburse the county for any and all double payments. (Finding 25)

RESPONSE TO RECOMMENDATION NO. 18:

An audit was performed. The amount of overpayments resulting from procedural errors totaled \$209.65. Upon being informed of this, the Chief paid the entire sum.

For the reasons indicated above, the recommendation has been implemented.

RECOMMENDATION NO. 19:

When there are District Attorney's Special Fund expenditures for meals and alcohol, the expenditures should be documented in more detail, including the names and titles of the persons whose meals and/or alcoholic beverages were paid, a several line description of the purpose of the meeting and, as is the practice, all supporting receipts attached. Proper internal control should be maintained to keep the identity of "criminal" confidential informants and protected witnesses confidential. (Findings 21 through 25)

RESPONSE TO RECOMMENDATION NO. 19:

The July 2002 revision of the District Attorney Special Appropriation Fund addresses the implementation of this recommendation. The Office of the District

Attorney has carefully examined the policy concerning documentation of expenditures from the Special Fund and has added most of the requirements suggested in Recommendation 19. Expenditures are required to be documented in more detail. A description of the purpose of the meeting is required, and, as has been the long-standing practice, all supporting receipts must be attached to the documentation. But, since investigations require confidentiality and disclosure may put informants or witnesses at risk, not all names and titles of the persons will necessarily appear on the documentation which could possibly become public.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 20:

A chain of command model should be adopted and followed in the District Attorney's Office for making work and case assignments. (Findings 26 and 27)

RESPONSE TO RECOMMENDATION NO. 20:

To the degree in which operations are not compromised, this recommendation describes the past and planned model for making work assignments.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 21:

Implement, at least, bimonthly meetings of the bureau chief with the assistant chiefs and all commanders. (Finding 28)

RESPONSE TO RECOMMENDATION NO. 21:

We understand the importance of constructive communication and the dissemination of accurate information and will continue to hold command staff meetings whenever such meetings will be productive and useful.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 22:

Implement, at least, monthly meetings of each assistant chief with commander(s) and supervisors in his respective chain of command. (Finding 28)

RESPONSE TO RECOMMENDATION NO. 22:

We understand the importance of constructive communication and the dissemination of accurate information and will continue to hold command staff and supervisor meetings whenever such meetings will be productive and useful.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 23:

Implement, at least, monthly meetings of each commander with his respective unit supervisors. (Finding 28)

RESPONSE TO RECOMMENDATION NO. 23:

See Response to Recommendation No. 22.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 24:

Continue the practice of preparing weekly status reports on sensitive and/or significant cases. Require the necessary contribution by the legal side of the District Attorney's Office to ensure timely and thorough reporting. The status report should be distributed to bureau command staff and legal executive staff. (Finding 29)

RESPONSE TO RECOMMENDATION NO. 24:

The practice of preparation and distribution of a critical case report has been re-implemented after its discontinuance by the prior Administration. The re-introduction of the report was effective January 2002 and is disseminated weekly to both the legal and investigative sides of the office. The report enhances communication.

This process was already in place before the Grand Jury Report; therefore, the recommendation will not be implemented because it is not warranted.

RECOMMENDATION NO. 25:

The Organized Crime Unit supervisor should report directly to a commander.
(Finding 30)

RESPONSE TO RECOMMENDATION NO. 25:

Due to the sensitive nature of this Unit, it is most appropriate that it report directly to the Chief of the Bureau of Investigation.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 26:

There should be a written detailed job description for the position of District Attorney's Office Media Relations Director. (Findings 31 and 33)

RESPONSE TO RECOMMENDATION NO. 26:

This is an Executive Assistant position within the County of Orange's classification system. The recommendation to prepare a specific detailed job description for the individual assigned to this position is not congruent with County policy, which provides for broad classification, or with the needs of the Office.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 27:

There should be written minimum qualification requirements for this position including a background in criminal law. (Findings 32 and 34)

RESPONSE TO RECOMMENDATION NO. 27:

The Office of the District Attorney will select the most qualified candidate for the position. The District Attorney, in making this appointment to this Executive Assistant position, determines and evaluates the required and desired skills. A background in criminal law is desired; however, the recommendation requiring candidates with this specific experience is not a reasonable method to recruit the best candidate for the position.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 28:

There should be specific guidelines and limitations for the position, including a need to know criteria. Media releases and other dissemination of information about cases to the press should be approved by the deputy district attorney handling the case, or one of the deputy's supervisors. (Findings 33 and 34)

RESPONSE TO RECOMMENDATION NO. 28:

It is not reasonable to believe that establishing written guidelines to limit the function of any position is in the best interests of the organization. The Office of the District Attorney operates in a dynamic environment including sensitive information regarding criminal activities on a daily basis. The Office practice is to exercise “need to know” limitations as appropriate for all personnel, including the media relations director.

At times it is in the best interest of the Office of the District Attorney to have the media relations director attend debriefings on sensitive cases. When needed, the media relations director can assist in the development of an effective strategy to handle media inquiries into these sensitive, typically high profile cases.

It is the Office of the District Attorney’s practice is to have the media relations director review press releases with the Deputy District Attorney handling the case or the Assistant District Attorney supervising the unit prior to issuing it to the media.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 29:

The Media Relations Director position should be subject to an open recruitment process with application and selection protocols in accordance with county employment policies. (Finding 35)

RESPONSE TO RECOMMENDATION NO. 29:

The Media Relations Director position is classified as an Executive Assistant. The application and selection protocols for this position are, and will continue to be, in accordance with county employment policies.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 30:

The Media Relations Director should report to the Chief Assistant District Attorney or a Senior Assistant District Attorney, not the District Attorney. (Finding 36)

RESPONSE TO RECOMMENDATION NO. 30:

The Media Relations Director is the District Attorney's spokesperson. Therefore, implementing anything other than a direct reporting relationship is unreasonable, as it will merely add a needless layer of bureaucracy.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 31:

Deputy district attorneys should be hired on merit alone. (Findings 37, 38, 40, 41, 42, and 43)

RESPONSE TO RECOMMENDATION NO. 31:

The recommendation is and has been the standard practice of the Office of the District Attorney. Each applicant for a position at the Office of the District Attorney goes through the County's normal recruitment process, in accordance with County selection rules.

This process was already in place before the Grand Jury Report; therefore, the recommendation will not be implemented because it is not warranted.

RECOMMENDATION NO. 32:

Mr. Rackauckas should not participate in the hiring decisions of any applicant. The person or persons in the District Attorney's Office who make the hiring decisions should not consider the relationship, or perceived relationship, of such candidate to Mr. Rackauckas. (Findings 37, 38, 40, 41, 42, and 43)

RESPONSE TO RECOMMENDATION NO. 32:

It is unreasonable to implement any policy that excludes the department head from the hiring process. The department head has the authority and responsibility to participate in hiring decisions as they deem appropriate within the County's selection rules.

In some cases, the department head is directly involved throughout the entire hiring process. Executive Managers positions, as described in the Response to Recommendation No. 4, are required to share the District Attorney's vision and

have a commitment to leading change in the organization. They are appointed and serve at the pleasure of the appointing department head.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 33:

District Attorney Office Policy and Protocol needs to ensure that only the most qualified candidates are hired to ensure the ability of the office to attract and recruit the most able attorneys and law students. (Findings 40, 41, and 42)

RESPONSE TO RECOMMENDATION NO. 33:

It has been the long-standing policy of the Office of the District Attorney to hire the most qualified candidates.

This process was already in place before the Grand Jury Report; therefore, the recommendation will not be implemented because it is not warranted.

RECOMMENDATION NO. 34:

Retain recruitment scores in dedicated computer archives for at least five years.
(Finding 39)

RESPONSE TO RECOMMENDATION NO. 34:

The Office of the District Attorney follows the County of Orange's policy on record retention for retaining recruitment scores. The policy dictates retaining

recruitment materials for a period of two years after the eligible list is abolished. The practice of the Office of the District Attorney is to hold attorney recruitments every six months. A recruitment abolishes the prior eligible list and creates a new eligible list. Therefore, in accordance with County policy, records for attorney recruitments are required to be retained approximately two years and six months.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 35:

All hiring worksheets need to be filled out using indelible ink and kept for a minimum of five years. (Findings 38 and 39)

RESPONSE TO RECOMMENDATION NO. 35:

The Office of the District Attorney follows the County of Orange's policy on record retention for recruitment scores. The policy dictates retaining recruitment materials for a period of two years after the eligible list is abolished. The practice of the Office of the District Attorney is to hold attorney recruitments every six months. A recruitment abolishes the prior eligible list and creates a new eligible list. Therefore, in accordance with County policy records for attorney recruitments are required to be retained approximately two years and six months.

As for the type of ink used, raters typically have a preference for pencil. Once final, the scores are submitted to the recruiter who inputs the scores into the computer.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 36:

The rating criteria, recruitment protocol, and time parameters of recruitment should not be changed or altered once the recruitment has commenced.
(Finding 37)

RESPONSE TO RECOMMENDATION NO. 36:

As a general rule, rating criteria, recruitment protocol and time parameters of recruitment should not be changed or altered once the recruitment has commenced. However, if an error or other significant issue negatively impacting the process is discovered, changes may be made. This is fully in compliance with the County's selection rules.

This process was already in place before the Grand Jury Report; therefore, the recommendation will not be implemented because it is not warranted.

RECOMMENDATION NO. 37:

All members of management (legal and investigative), below the level of the elected District Attorney, should have an annual performance evaluation at the

same interval and based on relevant, specific rating categories comparable to the criteria existing to evaluate non-management deputy district attorneys (applied to legal executive managers) and comparable to the criteria existing to evaluate supervising district attorney investigators (applied to investigative management). (Findings 47 and 48)

RESPONSE TO RECOMMENDATION NO. 37:

The specific rating categories for non-management Deputy District Attorneys and supervising attorney investigators are established by the County Executive Office's Department of Human Resources and are imbedded in each entity's respective bargaining unit.

In August 1999, the County initiated the Management Performance Plan (MPP), a new rating system for all managers, abandoning traditional rating categories in favor of an integrated approach to planning, performance appraisal and pay.

The overall objectives of the MPP plan are identified as follows:

- Establish clear priorities and expectations of performance;
- Actively involve plan participants in the evaluation process;
- Recognize and reward individuals for their contribution to achieving County and department goals;
- Apply sound performance planning techniques linking department planning and budgeting processes to individual manager level;

- Recognize the importance of management and professional skills to the achievement of goals;
- Communicate and apply a consistent approach to planning, motivating, appraising, and regarding County managers;
- Provide local department control for performance pay increases while maintaining County-wide fairness and equity; and
- Link the performance evaluation process for management with performance evaluation for all.

Executive Managers, which in the Office of the District Attorney include: Chief Assistant District Attorney, Bureau Chief, Senior Assistant District Attorney, and Assistant District Attorney, were not required to participate. However, the District Attorney recognized this as a promising tool and exercised the initiative to have all District Attorney Executive Managers use the MPP tool to develop goals and objectives.

Law Enforcement Managers, which include Commanders and Assistant Chiefs, are required by the County to utilize the Management Performance Plan program for the purposes of conducting annual evaluations.

In order to comply with the County's policy, the Office of the District Attorney cannot implement this recommendation.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 38:

All performance evaluations should be honest, objective and fair. Political allegiances, or participation in civil lawsuits, should not be a factor, positively or negatively. (Findings 44 and 46)

RESPONSE TO RECOMMENDATION NO. 38:

It is the long standing practice of the Office of the District Attorney to issue honest, objective, and fair performance evaluations.

This process was already in place before the Grand Jury Report; therefore, the recommendation will not be implemented because it is not warranted.

RECOMMENDATION NO. 39:

All employee performance evaluations should be given on a timely basis in accordance with applicable provisions following MOU and other personnel policies or agreements. (Findings 45 and 46)

RESPONSE TO RECOMMENDATION NO. 39:

It has been the long-standing practice of the Office of the District Attorney to implement this recommendation by giving performance evaluations on a timely basis.

This process was already in place before the Grand Jury Report; therefore, the recommendation will not be implemented because it is not warranted.

RECOMMENDATION NO. 40:

Job transfers/job rotations should be fair, consistent, and based on merit, as well as being otherwise consistent with the above referred to policies and procedures.

(Findings 49 through 51)

RESPONSE TO RECOMMENDATION NO. 40:

Job transfers and rotations within the Orange County Office of the District Attorney are fair and consistent with the content of this recommendation. The great majority of the approximately fifty employees that are transferred every six months perceive the transfers as fair and just. We will continue to base transfers and rotations on such things as the employee's request, the needs of the office and merit.

This process was already in place before the Grand Jury Report; therefore, the recommendation will not be implemented because it is not warranted.

RECOMMENDATION NO. 41:

Except in cases of dire emergencies, a job rotation should be preceded by reasonable notice to all affected personnel, at least a time period of two weeks.

(Finding 49)

RESPONSE TO RECOMMENDATION NO. 41:

Job rotations in the Orange County Office of the District Attorney are typically preceded by two weeks notice to the deputy prior to the transfer. The content of

this recommendation is the subject of our existing "Recruitment-Rotation-Promotion Schedule." This schedule has included and includes a two-week notice for rotations during the years 2000-2004. Unless Office needs dictate otherwise, we will continue to give two weeks notice prior to transfers.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 42:

An employee's support of a political candidate, or the fact that the employee was or is a political candidate, should not be a consideration in an employee's job assignment or rotation. (Finding 49)

RESPONSE TO RECOMMENDATION NO. 42:

When an employee is a political candidate, their assignment may be impacted. A possible or perceived conflict of interest may result depending upon the office and the types of cases handled by the employee. An example of this includes a City Council candidate potentially being assigned a case in which the City is an interested party.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 43:

Where a person who is not an employee of the District Attorney's Office complains about the performance or attitude of a District Attorney's Office employee, the subject employee, and the immediate supervisor should be consulted prior to a decision concerning the employee's job assignment or career. (Finding 51)

RESPONSE TO RECOMMENDATION NO. 43:

This recommendation is and has been the standard practice of the Office of the District Attorney. Personnel complaints from sources inside and outside the office are discussed with the employee and the employee's immediate supervisor. We will continue to follow this procedure.

This process was already in place before the Grand Jury Report; therefore, the recommendation will not be implemented because it is not warranted.

RECOMMENDATION NO. 44:

The District Attorney's Office should establish a written policy concerning the circumstances, and the level of justification needed, for the examination of employees' office-issued computers, and the protocol to conduct such examinations. The protocol should include the involvement of the subject employee's supervisor, to ensure that the protocol is followed and that any employee's privacy interests are respected. (Findings 52 through 54)

RESPONSE TO RECOMMENDATION NO. 44:

There is a written County and District Attorney policy and protocol regarding the examination of computers owned by the County of Orange. County computers can be examined at any time without justification because information in county computers is expressly limited to county business. A policy banner will not allow the computer to start up unless the employee acknowledges it will be used only for county business. The policy banner was implemented on October 9, 2001. Thus, the county employee thereby acknowledges they have no privacy interest or privacy rights in county computers. The Office of the District Attorney will continue to follow this procedure.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 45:

District Attorney's Office written policies should be established or updated prohibiting employees going through other employee's offices, belongings, and office-issued computers to obtain confidential documents or materials for dissemination to inappropriate entities or persons without proper authorization; or otherwise disseminating confidential materials to entities or persons. The policy should specify the level of disciplines for inappropriate actions in violation of the policy. (Findings 55, 57, and 58)

RESPONSE TO RECOMMENDATION NO. 45:

We will continue to comply with County policy and state laws. The advanced specification of levels of discipline for inappropriate actions does not conform to the County's policy of progressive discipline. Cases of inappropriate actions are investigated in accordance with County policy and decisions are made on a case-by-case basis. When appropriate, disciplinary decisions are made in consultation with the County Executive Office's Department of Human Resources.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 46:

There should be a formal investigation conducted to ascertain the District Attorney employee or employees who removed from the office confidential letters between the Attorney General's Office and the District Attorney's Office for dissemination to the press in March and April 2001. (Findings 55 and 56)

RESPONSE TO RECOMMENDATION NO. 46:

Currently, there is not sufficient information to conduct an investigation. If additional information develops a formal investigation will be conducted.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 47:

If DDA Kay Rackauckas returns to work, she should be assigned to work in a location other than the location of the executive offices. Mr. Rackauckas should remove himself completely from any supervisory decisions concerning DDA Kay Rackauckas. DDA Kay Rackauckas should be subject to the same supervision and accountability as other deputy district attorneys in her job classification. DDA Kay Rackauckas should not give input or otherwise participate in managerial decisions except as would be appropriate for a deputy district attorney of her same job classification who has no family relation to District Attorney Rackauckas. (Findings 59 through 66)

RESPONSE TO RECOMMENDATION NO. 47:

Ms. Rackauckas resigned from the Office of the District Attorney in May 2002; therefore, this recommendation is not applicable.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 48:

As to any circumstance where two or more relatives are employed by the District Attorney's Office within the meaning of county of Orange and District Attorney Office policy for the employment of relatives, the District Attorney's Office should adhere in form and substance to the employment of relatives policy and purposes behind such policy as expressed by County of Orange Personnel

Provisions. The Orange County Chief Executive Office (CEO) should monitor the District Attorney's Office to insure that the employment policy of relatives is followed. (Findings 59, 60, 61, 62, 63, 65, and 66)

RESPONSE TO RECOMMENDATION NO. 48:

The Office has and will continue to implement this policy by adhering to the County's policies and procedures.

This process was already in place before the Grand Jury Report; therefore, the recommendation will not be implemented because it is not warranted.

RECOMMENDATION NO. 49:

The District Attorney's Office should strictly enforce the County of Orange and District Attorney's Office policies that prohibit county employees from using county time and county resources (e.g. office equipment) to engage in political activities. (Findings 62 and 64)

RESPONSE TO RECOMMENDATION NO. 49:

Allegations of inappropriate use of county time and county resources are investigated and appropriate disciplinary actions are taken.

This process was already in place before the Grand Jury Report; therefore, the recommendation will not be implemented because it is not warranted.

RECOMMENDATION NO. 50:

Before the District Attorney's office in any way lends its name to a foundation, advisory commission, or other nonprofit organization, and expends county resources in support of such an organization, the organization should have its legal structure firmly in place. The organizers should be experienced and competent in nonprofit organization matters, and the organization's purposes and the District Attorney's participation should clearly be within the parameters of the February 10, 1998 Board of Supervisors' order concerning participation in charitable organizations. (Findings 67 through 70)

RESPONSE TO RECOMMENDATION NO. 50:

The legal requirements associated with starting a charitable foundation make it impossible to comply with this recommendation. The name and purpose of the foundation must be stated in the articles of incorporation at the very outset. The agency for which the non-profit corporation is being created must, of necessity, have some involvement in the development of the bylaws, structure, minutes, application of nonprofit exemption and other documents and procedures involved in establishing the legal structure of a foundation.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 51:

As to any nonprofit organization, or other organization, District Attorney Commissioner wallet badges should not be given to members of the organization because of the possibility of abuse. The District Attorney's Office should be cognizant of Penal Code, Section 146d which provides that a person who gives another a membership card, badge, or device where it can be reasonably inferred by the recipient, that display of the badge, card, or device would have the result that the laws will be enforced less rigorously than would otherwise be the case, is guilty of a misdemeanor. (Finding 72)

RESPONSE TO RECOMMENDATION NO. 51:

The recommendation is based upon an incorrect finding of fact. Wallet badges have never been issued by the Office of the District Attorney to non-deputized persons. Of course, the Office of the District Attorney remains aware of Penal Code Section 146d.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 52:

File an amended Charitable Activities Report for the year 2000 which accurately reflects the hours expended by district attorney personnel and accurately estimates the total cost to the county, including the use of equipment and costs of supplies. As to any future District Attorney office participation in a charitable

organization, employee hours, and resources used, should be documented accurately at the time. (Finding 71)

RESPONSE TO RECOMMENDATION NO. 52:

The report filed to the Board of Supervisors was a good faith estimate of expenditures. Since the foundation is now dissolved, there seems no reasonable purpose to expend additional county resources attempting to reconstruct another estimate.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 53:

Where Mr. Rackauckas or any other employee of the District Attorney's Office has a personal relationship to a victim, suspect, or witness in a case, such District Attorney Office employee should insulate himself from any decision making or participation in the case. If this cannot be accomplished, the matter should be referred to an outside agency, and if the circumstances warrant it, the office should recuse itself. (Findings 73 and 74)

RESPONSE TO RECOMMENDATION NO. 53:

It has been the long-standing policy of the Office of the District Attorney to avoid impropriety and the appearance of impropriety in participating in the investigation or prosecution of a case where the investigator or attorney has a personal

relationship with a victim, suspect, or witness. This recommendation, however, goes considerably beyond the proper policy. A friendship or personal relationship with a victim or witness does not usually create a conflict of interest or give rise to the appearance of one. This question must be decided on a case-by-case basis and circumstances of each individual case.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 54:

Upper management should communicate fully and accurately with investigators who are assigned to cases, the reason(s) for investigator reassignment, termination of an investigation, or other significant decisions concerning the handling of cases. Significant decisions as to handling and assignment of cases should not be made solely on the basis of complaints about investigators from persons outside the District Attorney's Office; verification of complaints should be obtained. (Finding 75)

RESPONSE TO RECOMMENDATION NO. 54:

The recommendation is and has been the standard practice of the District Attorney's Office. We agree that the effectiveness of instructions and information to subordinates, peers and/or superiors is integral to successful daily operations.

This process was already in place before the Grand Jury Report; therefore, the recommendation will not be implemented because it is not warranted.

RECOMMENDATION NO. 55:

Investigations of possible misconduct by District Attorney employees should be handled pursuant to the normal protocol for Internal Affairs investigations, not by the District Attorney and the Assistant Chief of Investigations. (Finding 77)

RESPONSE TO RECOMMENDATION NO. 55:

The recommendation represents the past and current practice of the Office. However, there are circumstances that require departure from this normal protocol. The relevant factors include the suspect and/or subject of the investigation.

This process was already in place before the Grand Jury Report; therefore, the recommendation will not be implemented because it is not warranted.

RECOMMENDATION NO. 56:

Mr. Rackauckas, or any employee of the District Attorney's Office, should not give or transfer a firearm under circumstances similar to the transfer of the Glock handgun to Mr. DiCarlo. Any transfer of a handgun by a District Attorney employee should be done with the utmost circumspection and caution. (Finding 76)

RESPONSE TO RECOMMENDATION NO. 56:

It is the policy of the Office of the District Attorney that all personnel should strictly adhere to the law. This policy has been in place and implemented since

the time Mr. Rackauckas took office. Consistent with this policy, the birthday gift to Mr. DiCarlo, was in accordance with all applicable laws, regulations and county policies.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 57:

An inventory of inactive and active Organized Crime Unit files should be taken, and the location of the files and other identifying information should be electronically indexed and periodically updated. (Finding 78)

RESPONSE TO RECOMMENDATION NO. 57:

The process of the file inventory and electronic indexing of the files in the Organized Crime Unit began in April of 2000. The undertaking was completed in January 2002.

This process was already in place before the Grand Jury Report; therefore, the recommendation will not be implemented because it is not warranted.

RECOMMENDATION NO. 58:

In complex cases, in highly specialized areas of the law, a line prosecutor who is an expert in the area of law and is intimately familiar with the facts of the case should be present and participate in settlement negotiations. (Findings 79, 81, 82, and 84)

RESPONSE TO RECOMMENDATION NO. 58:

Management will employ the most effective strategy in settlement negotiations. The line prosecutor may or may not be a part of the negotiation team. The composition of the team varies depending upon the individual case.

For the reasons indicated above, the recommendation will not be implemented because it is not warranted and is not reasonable.

RECOMMENDATION NO. 59:

The deputy handling the case and his or her immediate supervisor should be informed, at the time, when upper management of the District Attorney's office takes over a case for settlement purposes. (Finding 80)

RESPONSE TO RECOMMENDATION NO. 59:

This has been and continues to be the practice of the Office of the District Attorney.

This process was already in place before the Grand Jury Report; therefore, the recommendation will not be implemented because it is not warranted.

RECOMMENDATION NO. 60:

Mr. Rackauckas should be very sensitive to appearances of impropriety and take necessary steps to reasonably alleviate concerns in such area as to direct participation in cases, including, but not limited to, a decision to insulate himself

from decision-making in particular cases where the circumstances warrant such insulation. (Finding 83)

RESPONSE TO RECOMMENDATION NO. 60:

The District Attorney is cognizant of the responsibility to avoid the appearance of impropriety. It has been the long-standing policy of the Office of the District Attorney that personnel who have a personal or family interest in a pending investigation or prosecution recuse themselves from participation from that prosecution and/or investigation. It will remain the policy of the Office of the District Attorney to do so in the future.

This process was already in place before the Grand Jury Report; therefore, the recommendation will not be implemented because it is not warranted.

RECOMMENDATION NO. 61:

When senior management (senior assistant and above) of the District Attorney's Office agrees to a disposition in a criminal case, a final decision should not be made without consulting with the trial deputy handling the case or the appropriate supervisor; the disposition and reasons for the disposition, especially if the disposition is less than the standard practice, should be documented at the time in the district attorney case file; and the senior management should assure that the disposition is communicated as soon as possible to the affected line deputy and/or line deputy's supervisor. (Findings 85, 87, 88, 90, 91, and 92)

RESPONSE TO RECOMMENDATION NO. 61:

It has been the long-standing practice of the Office of the District Attorney for senior management to involve the line supervisor when discussing the disposition of cases. Generally there is no trial deputy assigned at this negotiation stage of the case. However, if there is a trial deputy assigned, the trial deputy would be included in the discussion. The substance of the discussion and recommendation is noted in the case file. We intend to continue the above practice which appears to be consistent with this recommendation.

This process was already in place before the Grand Jury Report; therefore, the recommendation will not be implemented because it is not warranted.

RECOMMENDATION NO. 62:

Where an agreed to disposition is not documented in the case file, and the prosecutor who is currently handling the case did not participate in the settlement, reasonable attempts should be made to verify the exact terms of the disposition with the prosecutor, or former prosecutor, who entered into the proposed disposition. (Finding 87)

RESPONSE TO RECOMMENDATION NO. 62:

Recommendations regarding dispositions are written in our files. We continually train deputies on the necessity to clearly document the case file. In the extremely rare instance when the recommendation is not written in the file reasonable efforts are made to verify the recommendation.

This process was already in place before the Grand Jury Report; therefore, the recommendation will not be implemented because it is not warranted.

RECOMMENDATION NO. 63:

Senior management (senior assistant district attorney and above) should be very sensitive to appearances of impropriety in the disposition of cases and take necessary steps to reasonably alleviate concerns in such area, including, depending on the circumstances, removing one's self from any participation in decision-making, fully documenting the file as to terms of disposition and the reasons for disposition, consulting with appropriate line deputies or their supervisors before entering into a disposition, and communicating the disposition in a rapid fashion to affected employees of the District Attorney's Office. (Findings 85 through 91)

RESPONSE TO RECOMMENDATION NO. 63:

When discussing the disposition of cases, senior management typically includes the line supervisor and trial deputy if one is assigned. Senior management is sensitive to appearances of impropriety in the disposition of cases. Where there is an appearance of impropriety, the manager does not participate in decision-making regarding the case. The recommended disposition and reasons for the recommended disposition are recorded in the case file. The above procedures appear to be consistent with this recommendation and we will continue to follow these procedures.

This process was already in place before the Grand Jury Report; therefore, the recommendation will not be implemented because it is not warranted.

RECOMMENDATION NO. 64:

Senior management (senior assistant district attorneys and above) should be very sensitive to the impact upon line deputies of their direct involvement in standard cases, and their actions should reflect such sensitivity. (Finding 91)

RESPONSE TO RECOMMENDATION NO. 64:

Senior management rarely gets involved in “standard cases”. However, when there is involvement, senior management is sensitive to the impact, if any, of their involvement on the line deputy, where a line deputy has been assigned. We will continue to be sensitive in these situations.

This process was already in place before the Grand Jury Report; therefore, the recommendation will not be implemented because it is not warranted.

ATTACHMENT

JANUARY 4, 1999 MEMORANDUM



MEMO

OFFICE OF THE DISTRICT ATTORNEY

TONY RACKAUCKAS
DISTRICT ATTORNEY

January 4, 1999

TO: ALL DISTRICT ATTORNEY EMPLOYEES

FROM: TONY RACKAUCKAS

SUBJECT: COMMUNICATIONS PLAN

Starting on 1-4-99 our office will begin a comprehensive but simple system to insure, improve and encourage communications within the office.

1. OPEN DOOR POLICY... All employees may meet with their supervisors regarding any matter related to the office or their career. If this conversation is unsatisfactory to the employee or fails to resolve the issues raised, that employee may discuss the matter with the next level of manager. This process may continue until the employee has contacted every level of management up to, and including, the District Attorney.

2. COMMUNICATIONS INPUT/ACCESS FROM DEPUTY DISTRICT ATTORNEYS... Communication may be passed to and from deputies in any of several ways; at regularly scheduled unit meetings, through the open door policy, through the office web site, or into an employee "suggestion box."

Office management may be contacted on the new office web site located at www.oc.ca.gov/da. In addition, a member of the office may contact our management through a "suggestion box" which will be located in the office administration area. The "suggestion box" can also be accessed by sending a note through the "pony" mail system marked DISTRICT ATTORNEY-CENTRAL-SUGGESTION BOX. THESE COMMUNICATIONS MAY BE SIGNED BY THE SENDER OR ANONYMOUS. ANY COMMUNICATION WILL BE WELCOMED WHETHER IT IS OF A "POSITIVE" OR "NEGATIVE" NATURE.

3. MANAGER'S MEETINGS... All levels of our office management will meet regularly to insure the proper exchange of information to and from all areas of the office. This improvement will allow not only for the dissemination of information from managers, but also for the transmitting of information to the management staff.